Tuesday, 27 October 2026

(9.56 am)

THE USHER: Good morning.

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 this Inquiry proceedings via YouTube will purposely be subject to a 10-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. The 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, a 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 recording 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.

(10.00 am)

SIR CHARLES HADDON-CAVE: Good morning. It should be understood by anyone observing these proceedings online

that the occasional suspensions of the live feed are usually only for a few minutes. All right, thank you.

Mr Glasgow.

MAJOR MATTHEW COX (continued)

Questions from COUNSEL TO THE INQUIRY (continued)

MR GLASGOW: May it please you, sir.

Major, we'd had your help yesterday afternoon with the review you had conducted in May going over the operational staff work and, where you had them, photographs in respect of the 11 DDOs, so that's Tyburn plus ten others, which had been the subject of the TTP review that had been conducted in 2011.

Now, you'd explained to us the suspicions that you had formed but that you had an open mind as to where any inquiry might lead you, and you'd also indicated that you were anxious, where possible, to speak to those individuals who'd been involved in those DDOs to get their account of what had happened and to see whether that corresponded, either to the photographs or the write-up in the staff work.

A. Yes.

Q. In terms of how you might categorise the individuals involved in those particular DDOs, could I just ask you, please, to pick up file 2 for a moment and turn to divider 74. We have a policy file note by you in July

2017, so about six weeks or so after you had completed that initial review that we've looked at and about two weeks or so after you'd officially been announced as the Team 1 SIO. Now what you've recorded here was:

"Those identified as the 'triggermen' in each Op will be IAC."

Interviewed after caution.

A. Mm-hm.

Q. Tab 74.

A. Yeah.

Q. I'll let you get your bearings. Your policy file report dated 25 July 2017.

A. Yes.

Q. It's dealing with the question of witness interviews. So, if there is a distinction between speaking to somebody as a significant witness and taking an account from them, and speaking to somebody in an interview after caution, why might you have the shooters being interviewed after caution?

A. As I started to explain yesterday, the -- my hypothesis as the SIO for certain investigations, certainly of the other DDOs, was that there had been potentially criminal activity taking place, namely the resultant deaths of individuals may not have been lawful and, therefore, if we had identified who the triggerman was, the shooter,

therefore it would be appropriate that individual be treated potentially as a suspect, should we not have any information to suggest otherwise.

So if we had been able to speak to -- as was -- my plan was to speak to the witnesses first, those who were surrounding, to establish if we could find out who the triggerman was and, with the evidence they produced, then decide, actually, from outset saying the triggermen would be treated with interview after caution, however the caveat there obviously being that, should the information received from witnesses change that to this would appear to be actually quite a lawful explanation as to what happened, then they would be treated differently. They would be treated as witnesses, significant witnesses.

But from the very outset, with the mindset being that actually I believe that something unlawful had occurred, it was appropriate that those triggermen, once identified, should be looked at with interview after caution, following their rights under law.

Q. So does it come to this: that, following your review and your consideration of both the paperwork and the photographs, you regarded the triggermen as suspects --

A. Essentially, yes.

Q. -- in possible criminal offences?

A. Essentially, yes.
Q. Hence the desire to interview them after caution which would afford them their legal rights --
A. Correct.
Q. -- and would ensure, in due course, the admissibility of that interview, if it was necessary to adduce it in any proceedings thereafter?
A. Correct.
Q. Okay. So would it be fair to observe that that's definitely a very marked distinction from the approach that had been advocated by the IRT, who had been suggesting that, in fact, you didn't even need to take statements; all you needed would be a duty report or a note, as you described it, on the back of a piece of paper?
A. Yeah, absolutely agree.
Q. Now, in terms of whether or not it was possible properly to categorise anyone involved in the operations as a suspect for any serious criminal offence, there was significant newspaper coverage in the summer of 2017 surrounding allegations that the SAS, to use the quotations in those articles, were "murderers"?
A. Mm.
Q. What I'd like to ask you to do, please, is to turn in file 1, so file 2 to one side, please, back to file 1

and to divider 43.

The Sunday Times Insight investigation team published an article on 9 July 2017, which ran with the headline "SAS" and then in quotation marks:

"'Murderers' ignored warning of wrong targets in Afghanistan."

This article was predicated on information provided to the newspaper by Captain Mike Martin, whose photograph appeared in the paper and who was named by the paper. It would appear that the information that he had provided was that members of the Afghan community had been killed during the course of raids, and his allegation was that not only would they kill members of a family but the activity was based on faulty intelligence.

Can I ask you this, please: when it came to the publication of articles in significant media publications, where allegations were made of, in this case, murder being committed by Special Forces, would you or the RMP try to see if you could speak to the potential source of that information.

A. We did. We went back to -- through -- the communications department actually went back to the media and requested that they provided us with their sources, quite rightly so, and they failed to produce

any names of people -- or they refused to give us any details, so we couldn't actually go and speak to these individuals, these sources that they claimed they had.

Q. Again, for the avoidance of any misunderstanding, the media are, of course, entitled to decline to provide details --

A. Of course.

Q. -- of their sources because they're protected under journalistic privilege.

A. Yeah.

Q. Here, of course, there is a difference. Mike Martin has been photographed and named in the paper but when you consider the information provided in the article, was he able to actually say "I saw an incident take place" or "I was present at any of these intelligence briefings"?

A. From my recollection, we spoke to him and he was not -- he was not present at any of the incidents, he did not physically see anything himself. It was only what he believed had occurred.

So from my recollection of the statement we recorded from him, it very much was a case of "Well, I didn't see it. I wasn't there. It's just my suspicions and what I've been told and what I've heard".

So again, there were no real leads we could follow on from that, it wasn't physical evidence which says,

"I saw this happen, I can give you the leads of who did this, who did what". It was very much a case of his belief of what had happened.

Q. It seems that the Insight Team have, in drafting their title, ensured that the allegation by him is put in inverted commas, so it is attributed to him rather than the Insight Team but the allegation, it would appear from the headline, is the SAS are murderers?

A. Yes.

Q. And that, as you told us, made by Mike Martin, based on his opinion, which doesn't come from any direct evidence that he either saw or heard anything?

A. Not that I'm aware of no.

Q. Simply what he formed as a view and what he was told by others?

A. And his opinion of being blocked from certain briefings, as he described.

Q. Now, at the same time as the Sunday Times produced that article, the Insight Team also produced articles rehearsing the request by a number of people that a public inquiry take place in respect of the allegations that were being made about Special Forces in Afghanistan.

In any way, did that place pressure upon you as the investigating team to have to act fast or to have to act

more expeditiously?

A. I don't think it did. I think it -- from my recollection, the -- it gave us some sort of hope that there might actually be some witnesses out there when we have these journalistic articles stating that there are sources who have given information, witnesses that have provided information. The irony is that actually having gone through the media, and as you've quite rightly pointed out, they wouldn't and shouldn't and didn't have to give us those sources. So whilst reading the article you suddenly think, oh, actually, there are potential lines of inquiry here we could follow, potential witnesses, sources of information, lots of -- yeah, maybe positive or negative lines of inquiry, trying to follow them up was just a dead end, in many respects.

So excited at one point, thinking potentially we've got lines of inquiry, and then, when you actually delve into it, either the individual themselves, as Captain Mike Martin has said, wasn't a physical witness to these incidents and then these other sources, which apparently they had, we had no access to them.

Q. As to the allegations that were reported from Mike Martin in the paper in July, was Northmoor trying to unravel any of the intelligence that might lie behind the DDOs or was Northmoor looking to see whether

unlawful activity had taken place on the DDOs?

A. We used the intelligence to -- access to the intelligence reports, et cetera, to see if there was actually enough justification for the operations to make them lawful operations in the first place, under the rules of engagement.

So it was a case of looking all the way back to why the operation occurred in the first place, based on intelligence and information that led to -- that resulted in the deaths of individuals. So it formed part of the whole evidential package in terms of the understanding of why the operation took place, right through to the actions on the ground and whether those correlated to the information that had been provided in the first place.

Q. In terms of the justification for a particular operation being launched, did you have in mind that, in order for targets to appear on the targeting list, that what would be required would be the appropriate pillars of targeting having been satisfied?

A. Yes, I was aware of that.

Q. So an identified and established procedure that had to be gone through for any name to be placed on the targeting list and then subsequently for any DDO, if appropriate, to take place?

A. That's correct.

Q. Again, as was made clear when the Inquiry first began, as the Chair has made clear, the Inquiry does not propose to examine the intelligence that lay behind the different DDOs.

A. No.

Q. Large amounts of evidence has been received by the Inquiry in respect of that already. What the Inquiry is concerned with, perhaps marrying up with what Northmoor was concerned with, is whether or not there was unlawful activity on the DDOs?

A. Yeah.

Q. And the Inquiry, as you will no doubt have heard recently, is particularly concerned with whether there was a practice of executing fighting-age males during the course of the operations?

A. Yes.

Q. The allegation that there may or may not have been a practice of executing fighting-age males goes back to, of course, the account said to have been given by N1201 to N1799.

A. Yeah.

Q. When you came to look at the paperwork and the photographs and when you were thinking about allegations you read in the paper, did you have in the back of your

mind that we have information -- let's distinguish information and evidence for a moment.

A. Yes.

Q. We have information that somebody who was a member of the SAS sub-unit on Operation Tyburn, for example, is reported to have said "We go out and we execute all fighting-age males irrespective of the threat they pose"?

A. Yes.

Q. When you came to look at the photographs and were applying a gaze of scrutiny or careful examination to them, did you also have in mind that that same individual was said to have reported to another member of Special Forces that photographs of the operations are staged to imply that individuals had a weapon in their possession when they didn't?

A. Absolutely, and this was clearly at the forefront of our mindset as we took on -- as we looked at every DDO, every allegation that was presented to us.

Q. You told us that, by the end of your review in late May, you'd reached a point where you didn't know if you could believe what was written down or if you could rely on the photographs?

A. That's correct.

Q. Did your position ever change whilst you were the SIO

for Team 1? Did there ever come a point where you were able to say to yourself: actually that photograph shows exactly what it should?

A. No, because we were never able to identify who wrote the reports in the first place, to confirm the veracity of the reports. If we'd actually been able to speak to the individual who said, "I wrote those reports based on what I was given" or "I was actually on the ground at the time and I can hand on heart say, on a Section 9 statement, signed as a witness to say that is correct", that would have gone some way to help me understand and maybe believe some of the -- or believe -- actually consider the information to be accurate. But as we never actually were able to identify who wrote those reports, as far as I was concerned, without somebody saying, "Well, I wrote the report", I had to take every one of those as a: well, it's information, but it's not necessarily fact.

Q. Major, what I wanted to do was to invite you to look at correspondence that had been exchanged between the Sunday Times and the DDC, the Directorate for Defence Communications, prior to the publication of the article. If you've still got file 1 available, could I invite you to look, please, behind divider 4. Could you please turn to page 24 within that section. So 4-24.

What we have here is an email that is being exchanged within the DDC, it having come from the Sunday Times and in particular from the insight editor and what is written in the -- we can see in bold:

"For the attention of the Ministry of Defence press office.

"Private and confidential.

"We are writing an article for this weekend's newspaper about allegations of war crimes against the British Armed Forces in Afghanistan which have emerged in the Royal Military Police's Operation Northmoor investigation and elsewhere."

So anyone with any limited knowledge would know immediately what the rest of the email was likely to be about:

"In the past, it has been reported that Northmoor was examining 675 allegations of abuse which included 52 unlawful deaths. We wondered if you could give us some guidance as to whether this is still accurate following the Defence Secretary's announcement in February that Northmoor's caseload would be slimmed down by 90%.

"It is our understanding that the alleged unlawful deaths now make up a significant proportion of the remaining cases under investigation and a number of them include allegations that unarmed Afghanis were executed

by the Special Air Service and other Special Forces during night raids. We would be grateful if you could answer the following questions:

"1) How many allegations of unlawful deaths are now being investigated?

"2) How many of those deaths were shootings by the SAS or other Special Forces?

"3) Whether anyone has been interviewed under caution, arrested or charged in relation to allegations of unlawful killings in Afghanistan in the years since Northmoor started."

Then, in the following paragraph, it refers to a specific allegation that:

"One SAS squadron, which we do not plan to name, planted [a] pistol ..."

Now, that was sent in by the Sunday Times and indeed passed, as we can see, by the DDRC, from the information at the top of the email, to the Northmoor team. In particular, it went to Colonel Rob Morris, Acting Head of Northmoor.

If we then, please -- thank you very much indeed.

Assistant Head, I do apologise. Assistant Head of Northmoor. I'm not going to read all the emails that were exchanged but, again, as with any section, if somebody wants me to look at an email that I have

skipped over I will of course do so. But trying to identify those areas that may be of importance, if we just turn back in the bundle to page 20 because, of course, we're reading chronologically, so one needs to start at the back and go to the beginning.

Page 20 involves an exchange of possible lines that might be taken in respect of the request made by the Sunday Times Insight team.

It begins with the obvious important message:

"Our military serve with great courage and professionalism and we proudly hold them to the highest standards. Where allegations are raised, it is right they are investigated. To date, the Royal Military Police has found no evidence of criminal behaviour by the Armed Forces in Afghanistan and, as the Defence Secretary announced in February, are set to have discontinued over 90% of the allegations by this summer."

Then, as to "Further lines", what is set out there are possible answers that might be given to the specific questions posed by the editor for the Insight Team and, if you look to the bullet points that appear beneath the italicised questions -- so the italicised questions repeat those that were issued by the editor and now possible answers. So as to whether or not the caseload

would be slimmed down by 90 per cent:

"The Op Northmoor team remains on track to discount over 90% of allegations this summer. 485 of the 675 complaints have already been reviewed and discontinued and this number will continue to drop significantly."

Can I ask you this: in terms of slimming down Northmoor's caseload by 90 per cent, it's one thing to make that description as regards Team 2, because you have told us that the work that was ongoing to reduce the number of allegations predicated on the Leggatt Test, in effect no signed statement, therefore no complainant, therefore no complaint to investigate.

Did the same apply to the investigations that you were now heading up as SIO for Team 1, namely investigations into the unlawful killings?

A. No, they were not included in those numbers.

Q. Right. So either in error this has been drafted and might give the appearance that 90 per cent of the unlawful killings are going to be discontinued, or someone has misunderstood the information they've been given.

A. Yeah.

Q. Or possibly, it might be an effort to mislead?

A. Yeah.

Q. Can I ask you this: at any point, was there a discussion

within Northmoor and particularly within your team, about what should or should not be said to the media?

A. I was asked to provide detailed numbers, so the 90 per cent, the facts and figures. How many -- how many had been discontinued so far, what was left and what was predicted to be left by, as they say, the timeline of summer that year.

Discussions of what should be said to the media were not -- weren't for us to engage with. We were there to provide the detail for the Assistant Head of Northmoor and the POLADs to act on our behalf in those respects.

Q. Before anyone places the blame there for any misunderstanding about the 90 per cent at your door, can I just check this please, Major: if you did give a figure of 90 per cent, which was the estimated slimming down, was that in respect of Team 2 and Team 1, or just in respect of Team 2?

A. Just in respect of Team 2.

Q. Understood.

Then turning to the next question that had been asked:

"How many allegations of unlawful deaths are being investigated?

"There is one incident of this nature which is an ongoing investigation. It would be inappropriate to

comment further."

Was there one incident which was an ongoing investigation?

A. Operation Tyburn.

Q. What about Objectives 1 and 2?

A. They were not -- at this time, they were not -- this is May 2017 -- they were not actively investigations; they were being scoped.

Q. What is the difference between scoping an unlawful killing allegation and investigating it?

A. So the -- in terms of Operation Northmoor, we only had one -- Operation Tyburn was the only one out of the 11 operations that had been given official investigative status with an investigative serial number, an IRN or investigation reference number, and therefore was being pursued actively as a murder investigation.

The others, as I say, were scoping. So the scoping exercise, the best way of trying to describe it is background checks, trying to collate information, bringing all the information we could from the servers, without actively putting an investigation reference number onto it and, therefore, upping the ante on each often those DDOs.

Q. So would it be fair to observe that, whilst there was one active investigation, there were ten other matters

involving potential allegations of unlawful killing which were being looked at by Operation --

A. That's correct, yes.

Q. Then perhaps a very simple and straightforward answer. When the question is posed:

"How many of the deaths were shootings by the SAS or other Special Forces?

"It would not be appropriate to comment further on an ongoing investigation."

It may well be that that's a standard line that's taken invariably by investigative bodies when they engage with the media.

A. Yes.

Q. Then:

"Whether anyone has been interviewed under caution, arrested or charged ...

"No one has been arrested, interviewed under caution or referred for charge in relation to allegations of unlawful killing at this time."

Again, reminding ourselves that, at that point, whilst you had in mind, later on in July, that shooters would be interviewed after caution, we hadn't yet got to that point in the chronology?

A. That's correct.

Q. Then:

"One SAS squadron, which we do not plan to name, planted the same pistol with the same serial number on the victims to make it look like they were both armed and high-ranking Taliban officials rather than unarmed people, sometimes civilians."

The answer:

"We are not aware of any evidence to support this allegation."

Is that correct?

A. At that time, it was absolutely correct.

Q. What about the evidence that you had from 1799 that 1201 had said to him that weapons would be placed beside the body of deceased individuals and photographs taken to give the impression that they had been armed?

A. That statement, or whatever you want to call it, the paper with those words written on it, if you recall, it said "I had been made aware of or been told this is what has been happening", so it's only an account, not been challenged. So, as far as we're concerned, whilst it provided us with a starting point and actually gave some very, very clear suspicions as to what might have been going on, there was no time, date, place in that information to say a specific incident. And, therefore, we couldn't correlate that to any of our DDOs or any other events or any other actual allegations or

complaints of the pistol being placed somewhere. So whilst we had this information, it didn't correlate to anything we had seen so far.

Q. 1799 had been spoken to and had confirmed the accuracy of what was recorded in that document, hadn't he?

A. Yes, he had, yes.

Q. He had declined to cooperate with the investigation to provide a statement?

A. That's correct.

Q. But notwithstanding that, he had said he stood by what was written down. That document recorded that it was implied -- he'd said that "Photos would be taken of the deceased alongside weapons that the fighting-age male may not have had in their position" -- I think it must mean "possession", or "in their position", it reads, when they were killed.

Now that might not link to any particular DDO because it's not timed but you were aware that the alleged -- the individual who was alleged to have provided that information had been part of the team on Operation Tyburn and Objective 1?

A. That is correct, yes.

Q. So there was, at least, a temporal link that the investigation could draw between the DDO you were investigating and at least one of those that you were

scoping?

A. Potentially, yes.

Q. And that that person was said to have either confessed or alleged or claimed, however one describes it, that the photographs would be unreliable because weapons would be placed or planted?

A. That could be suggested, absolutely, yes.

Q. Okay, so when the media are told, if they were, that the MoD are not aware of any evidence to support the allegation that pistols were planted, in any way would it be unfair to suggest that that answer is a little misleading?

A. I think you could look at it that way and potentially think that it would be misleading but, as I say, my opinion of it is that, without any sort of corroboration and linkage to a specific event, as it were, then I think what we said is more or less correct.

Q. Leading on with the emails, if we can, please. Can we turn back, to go forward in the chronology, to page 14 within this section.

Again, in a sequence of exchanged emails, this time from DDRC, so from the Directorate of Defence Communications, back to Op Northmoor, what is written, if we look to the blue entry second down:

"I suggest we go back with the below format:

"The Ministry of Defence has previously briefed that Operation Northmoor was investigating 52 alleged unlawful killings."

Was Northmoor investigating 52 alleged unlawful killings? I thought you just told us that Northmoor was investigating one DDO, and that's Tyburn, on which four people were killed.

A. Yes. I think the wording is potentially wrong on that, in terms of -- whilst we were -- we were looking into 11 incidents that resulted in the deaths of 52 people, investigating 52 alleged unlawful killings, they didn't have investigative -- we didn't have investigation serial numbers for each of those 52. What we had was for four of them, for Operation Tyburn, we had a full investigation going, and then the other 48 potential alleged unlawful killings were not at full investigative status at that time.

Q. The question that's being sought to be answered here is whether Northmoor is looking now at only one incident and what that means for what is said to be the dozens of cases that had been reviewed and discontinued, and the proposed answer to that question is:

"Yes. 50 allegations of unlawful killings have been discontinued. (The 2 remaining allegations both relate to the same incident.)"

Can I ask you this: if the only live investigation at this stage is Operation Tyburn, did that refer to two allegations or, in fact, four allegations?

A. That should be four allegations.

Q. Right.

A. Yes.

Q. Insofar as 50 allegations of unlawful killings had been discontinued, had Northmoor discontinued 50 allegations?

A. They hadn't discontinued them; they hadn't even started them, to be fair. They were sat there as a part of the other 10 operations which were still being scoped. So definitely not discontinued, by any stretch of the imagination.

Q. Again, would it be unfair for anyone to think that in some way this gives a misleading impression of what Northmoor has achieved, namely exonerating Special Forces from 50 allegations of unlawful killings?

A. It's inaccurate, poor soul.

Q. Did anyone seek your advice or assistance as the SIO for Team 1, as to how many discontinued investigations there were?

A. I was obviously asked to provide numbers. As to what I provided them, only the emails will actually remind me, if I'm honest with you.

Q. Let's turn back, please, if we can in the sequence,

going back in the bundle to page 4-12, if we may. Then the bottom email, which we can see comes from DJEP, the Directorate of Judicial Engagement Policy, and then that is sent, amongst others, to the Op Northmoor team.

"Just had a word with Brig Dave ..."

For the avoidance of any misunderstanding, is that PM(A) Brigadier David Neal?

A. It is.

Q. "... who tells me he defers to your view and that of Gold on this.

"I do think there is a credibility problem. If you refuse any comment on the disparity of a previous disclosure that 52 allegations of unlawful killing are being investigated and the current statement that only one incident remains under investigation. Accepting the police view that to disclose numbers of deaths involved in that one investigation would be prejudicial, I think we should say, off the record:

"We can confirm that investigations of the vast majority of allegations of unlawful deaths have been discontinued for lack of evidence."

Would that be correct?

A. That's not correct at that time.

Q. I mean, if there had been a discussion with Brigadier David Neal or Gold or indeed the police view that had

been ascertained, would you have thought anyone would be suggesting that the answer to the media ought to be: the vast majority of unlawful killing allegations have been dismissed for lack of evidence?

A. That wouldn't be correct.

Q. If we turn back one page to page 11, please. Continuing the development of the possible answer that might be given to the media, the Northmoor team wrote back to the Defence Directorate of Communications and if one looks to the middle "A" answer:

"We can confirm that 13 allegations of unlawful killings have been discontinued due to lack of evidence."

Right or wrong?

A. From Northmoor's perspective, that was wrong.

Q. Had you discontinued any unlawful killings at that stage for lack of evidence?

A. At Northmoor, no, but if they are -- from my recollection, if they are also considering some of the other operations that came under review from Operation Northmoor -- I mean, I'm not sure whether I'm allowed to mention the names of the operations that came under it.

SIR CHARLES HADDON-CAVE: No.

A. No, sir, that's fine, but I'm sure you know the ones, potentially what I'm referring to, were not directly

part of Northmoor but we reviewed them as part of the case, then if those numbers were added up, that may suggest where they got those numbers from because those cases were previously looked at and had been discontinued.

So they didn't form part of Northmoor; they were reviewed by Northmoor to see if there were any similarities. So if those are the numbers that they are referring to, they weren't Operation Northmoor numbers, as in the 1 plus 10, they weren't any of the 675 allegations of criminal or non-criminal conduct conducted by British forces but they may well refer to the other operations that were reviewed by Operation Northmoor, considered if there are any similarities, but had already been investigated and then either referred to a charge or discontinued.

That is the only way I can think of where they got those 13 numbers from.

MR GLASGOW: If it helps, by my maths, it's 12 EKIA from those operations, not 13.

A. There you go.

Q. But can we just look at the question that is being answered:

"The Ministry of Defence has previously briefed that Operation Northmoor was investigating 52 alleged

unlawful killings."

A. Yeah.

Q. Those were the 52 that you said were in mind from Operation Pavo and the remainder of the other ten DDOs from the TTP review. It had nothing to do with the other operations that had been looked at, did it?

A. No.

Q. So if someone answered that question about the specific investigation and scoping exercise that you were undertaking, with that answer that, "In fact, we can say we've dismissed 13 already", that might mislead somebody into thinking that 13 of the 52 have been dismissed?

A. The way that is written, that would -- could easily mislead somebody.

Q. It may well be that whoever has written this has been given the wrong information, or they've misunderstood the information they were given, or they've misinterpreted what they've been told.

A. Quite possibly.

Q. The simple maths, if we're doing it with you for a moment, as far as the 52 are concerned, none had been discontinued for lack of evidence at this stage?

A. At that stage, as far as I'm concerned, yes.

Q. In terms of eventually how it came to be answered, can we just turn back in the bundle to page 4-7, please.

The Directorate of Defence Communications emailed the Op Northmoor team to confirm that the below was going to be sent to private offices at 1300 so about 44 minutes or so after the email was sent. The question posed, as we've seen before:

"The MoD has previously briefed that Operation Northmoor was investigating 52 alleged unlawful killings."

Then the answer:

"We can confirm that a significant amount of unlawful killing allegations had been reviewed and discontinued."

Now, if in brackets what was written after that was "Not any of the 52 that are currently being investigated and/or scoped", would that be an accurate answer?

A. That would be a more accurate answer, yes.

Q. But in simply asserting that it can be confirmed that a significant amount of unlawful killing allegations had been reviewed and discontinued, in answering the specific question about the 52 being reduced to 1, might that mislead the reader?

A. That could easily mislead the reader.

Q. Now, insofar as your involvement in this, we don't see your email appearing within the exchanges that there are between either DJEP, DDC or the Northmoor senior team

members. However, if we just turn back to page 2, and the reason I've asked you about this consequence of emails I hope now becomes clear.

You were sent this exchange by Gold, Lieutenant Colonel Harvey, so page 4-2, you were sent this exchange of emails which you had an opportunity to read because, as we see at the top of page 4-2, you wrote back to Lieutenant Colonel Harvey, the Gold Commander:

"Having now read this complete ..."

In other words, do we take it from that that you had started at the end and worked your way back to read the sequence of emails?

A. According to this I had.

Q. Your real concern, it seems, is not the way the questions are being answered --

A. Yeah.

Q. -- but refers to 12 sources which the journalist refers to. Again, we see what may be a practice of yours of applying question marks or exclamation marks to observations you make, possibly to attach some significance to them?

A. Yeah.

Q. When you put three exclamation marks at the end of this sentence, what were you trying to do, please, sir?

A. I think, from recollection, just add -- acknowledge the

fact that they are referring to 12 sources and who are these sources? So that's what my real concern is: who are they; what role; are they current or past? And they are saying they have -- I seem to recall they mentioned about the 12 sources, including current and serving members of the military police as well. Who are they? This is a real concern for me that actually information was being leaked out from somewhere and provided to the journalists.

Q. If there were sources that were in a position to give direct evidence about unlawful killings or potentially unlawful killings, would you, as the Silver Commander and SIO for Team 1, have wanted to speak to them?

A. Absolutely.

Q. Now, the 12 sources, in case it helps, if we just go to page 4-10, in an email from Colonel Morris, we can see, at the bottom of page 4-10, he records that the previous Gold Commander for Operation Northmoor, who has since retired, reported that he was approached by a journalist from the Sunday Times, David Collins, who asked for comment on the story below. He -- that's the previous Gold commander -- declined to give any comment but the journalist told him, it must read -- there must simply be a typo there -- but the journalist told him that he -- that's the journalist -- has 12 sources, a mix of

on and off the record, and it appears that the journalist has a fair amount of detail. Then any approaches from that journalist will be directed to DDC.

The 12 sources that you had identified in your reply, is that where you got that information from?

A. That must have been where I got that information from, yes.

Q. So rather than engaging in the way in which journalistic questions were being answered, you appear to have focused on potential lines of investigation for your team?

A. Yes.

Q. Okay. When you read the answers that were being proposed and then ultimately given, did you think to yourself at the time: this doesn't sound right to me; we haven't discontinued that number of investigations?

A. I do recall having conversations over the numbers with Gold Commander and AH Northmoor and I remember there was confusion over 52 as to what those 52 included. Now obviously, without going back to any emails or any notes I have on those, I do recall there was a lot of confusion as to what those 52 included, what they covered, whether it was other operations or not.

But because of the set-up and who deals with this, provided I'm providing the information, the responses at

that level to the DDC, it was not my responsibility. So as long as they were happy with the information I was providing and they were happy with their responses to the DDC, it was not my place to start challenging that, hence why my focus was more about, great, if you're happy to -- with the information we've given you, you can explain it and you're happy that, at the senior level, you are engaging as your role is with the DDC, that is not for me as the SIO to worry about. I'm more concerned about the sources and where this information is coming from or have they got information that we need as the investigation team to progress this investigation?

That's my focus, rather than what's being reported to the media when we have a whole team, namely the DDC, namely AH Northmoor and the POLAD to deal with that element of the investigations, as it were. That's what their role was: to prove a firewall between the journalistic piece and allowing us to get on with our investigations. So questions to me would be: how many? Right, there's your numbers. What information you deal with is for you to deal with. I'm more concerned about the source information of what they have for us.

SIR CHARLES HADDON-CAVE: Whose responsibility was it to correct what the journalists were being told?

A. As far as I was concerned, sir, it was for the AH Northmoor and the POLAD, the senior part of the Operation Northmoor, to ensure that information that was passed up to DDC was correct. Now, clearly, sir, they'd asked me for numbers, facts and, as I say, I remember having a discussion, I'm pretty sure there's some email somewhere with me going backwards and forwards saying "Does that include these numbers? Does that include that?" But once I've provided information, that is for AH Northmoor and POLAD to confirm they're happy and they then provide the information up to the media, sir.

MR GLASGOW: Again, just looking if we can, very briefly, to page 4-2 again, to the focus of your interest, having identified your concern about 12 potential sources and, at this stage, you have a live investigation in respect of Tyburn and a scoping exercise in respect of ten other DDOs, you write:

"Who? What's their role? Current or past?"

Perhaps obvious questions to find out because, if they weren't there at the time, they aren't going to have any direct evidence.

A. No.

Q. They may only be reporting rumour or gossip or the other sources of information that --

A. Of course.

Q. -- you were criticised for relying on by the IRT.

A. Yeah.

Q. But what you wrote was:

"If that's 12 people who 'On and off record' are prepared to talk, we need to speak with them to prove or disprove the allegations and some of the inferred allegations which we may not already be aware of."

Insofar as the need for your team to speak to as many of those 12 as you could, to prove or disprove the allegations being made, were you given any assistance from the Sunday Times to speak to any of those 12 individuals?

A. Not that I recall, no.

Q. At the same time that the Sunday Times published their article based on the information provided to them by Mike Martin, The Mail Online also published an article. That can be found in file 2 at divider 91, please.

What is set out here is an email that you had written about the article itself. You record that:

"[In July 2017] the Mail Online published an article entitled 'The truth about SAS shoot-to-kill night raids by hero of 200 secret ops: Soldier breaks ranks to defend elite unit from witch hunt but says illegal killings were "unwritten rule of our job"' ..."

Then you provide information set out within the

article.

In terms of there being an apparent source from within the SAS who had told Mark Nicol, the journalist from the Mail on Sunday, in fact, I apologise, but who that told Mark Nicol that there was an unwritten rule that illegal killings take place during the course of shoot-to-kill night raids, is that the sort of individual that you, as the investigator, would want to speak to?

A. Absolutely.

Q. In terms of how you tried to find that information out from Mark Nicol or The Mail Online or the Mail on Sunday, who's responsible for trying to liaise with them on your behalf?

A. The DDC.

Q. If we look a little further down the entry, we can see on the left-hand side, about halfway down the rationale section, "NM", a paragraph "Northmoor", it begins, do you see that, sir:

"[Northmoor] do not approach Mail on Sunday directly as per the media strategy but go through DDC. Approaches have been made to DDC [that's the Directorate of Defence Communications] with regards to this request, which have not been actioned."

We can see that there are emails on 10 July

immediately after the article was published, and then 13 February. Do we understand from that that your desire to speak to the potential source from within the SAS, if the article is correctly described, so that potential source, who appears to have said "illegal killings were an unwritten rule of their job" that you had, per the protocol, asked the DDC to approach the Mail on Sunday but that you'd had seemingly no response to the emails that you'd sent?

A. That is correct.

Q. Now, given it is possibly an important source of information, is there any reason why you only emailed once in July and then not again until February?

A. I can't actually think at the time as to why only in July and February, as to when that's just the -- when the articles came out. So it just triggered the "Let's go back and ask them again if they'll give us" -- approach DDC and then ask the respective journalists as to whether they'll give us the source of the information or not.

Q. Do you know now whether or not DDC or anyone from within that Directorate did contact the paper to ask if they would provide the source?

A. Not that I'm aware of.

Q. So it may have happened --

A. Yeah.
Q. -- and that request may have been declined and therefore no one thought to pass it to you because they had no information?
A. That's all I can surmise.
Q. Or as you've recorded here, in fact, they may not have been actioned?
A. No.
Q. In other words, nothing had been done about your request: you just don't know?
A. No, I don't know.
Q. But as far as you weren't provided with the name of the newspaper source, in any way did that surprise you?
A. It didn't surprise us at all because we knew that, obviously, it was highly unlikely that the journalists would ever come back and say, "Well, actually these people, here's their mobile numbers and email addresses, if you want to get hold of them". But we had to ask the question, we couldn't ignore it, in case they wanted to speak to us and not just the journalists.
Q. Rather than the journalists providing the name and number, which is perhaps highly unlikely, given it's a confidential journalistic source, did you want to explore the possibility probably that your contact details could be provided to the source and the source

could be asked, "If you want to speak to anyone from Northmoor, here's the contact details for [for example] Major Cox"?

A. That would have been probably a good idea but I don't recall actually even thinking about that to be honest with you. I think we just went thorough asking them for the direct contact, rather than us giving them our number. There was -- I know there was set up on the website for Operation Northmoor a number and a contact detail, to say, "If you have any information please come forward" but I don't think that was ever passed on to the journalist to say, "If you want to give this to the -- to your potential source". I don't recall that ever happening.

Q. In terms of the general approach, if there is one, of soldiers to the RMP or to the SIB, would it be fair or unfair to suggest there is a reluctance to engage with you?

A. I think that would be appropriate to say that, yes.

Q. Are you able to explain at all why it might be that soldiers seemingly are reluctant to engage with the body charged with investigating their activities or the activities of their colleagues?

A. Honestly, no. I mean, we're a policing organisation. Unless you are really content to give information,

either confidentially or openly, to the police because you believe it's the right thing to do, that's a personal choice. I mean, I can't speak for any individual and assess as to whether they have a conscience, should we say, to provide information or not. It's really based down to the individual that we -- if people wish to come forward, so they believe something has happened or is unlawful and therefore it should be investigated, they will. But if they're not prepared to, if they don't have a conscience or they don't feel confident in what they're doing or maybe they didn't feel confident on who is going to be actioned, you know, it's one of those things you can't actually quantify and give a proper *(unclear)* answer on as to why people did or didn't come forward.

Q. We can see from the email exchanges that we've looked at in respect of the Sunday Times newspaper article that responses to that were shared between DJEP and DDC and Operation Northmoor?

A. Yes.

Q. Insofar as there was senior briefings -- and by that I mean Northmoor providing information to senior individuals about the progress of the case -- can I ask you a little bit about that, please. Can we look together to another document in file 2, if you have it

available to you, and it's divider 75, please.

The reason for inviting your attention to this is, in terms of the chronology, we've moved on from the July publications of the two newspaper articles, and now we're into August. We can see here:

"DCGS will be briefed on Northmoor and specifically Team 2 activity focusing on N50 and 1133 allegation. The brief will be deliberately bland."

Now, a focus on Team 2 activity, so that's not the unlawful killings which have been the subject of press reporting but at is -- at least one of the questions were asked about Team 2 activity because the answer related to a reduction of up to 90 per cent of cases being looked at. So if there's good news, it's that we've got rid of 90 per cent or we hope to have got rid of 90 per cent of the detainee abuse allegations.

A. Mm-hm.

Q. Now, in terms of briefing DCGS, why were you told it was necessary to brief someone at that level about the progress of Team 2 activity?

A. I seem to recall it was just a case of he was -- I believe he was the new DCGS, the Deputy CGS, and therefore it was believed that, from a senior officer level, that there was -- because of the high-profile nature of Operation Northmoor and that it did involve

a lot of cases and potentially a lot of soldiers being looked at for certain allegations, that the senior officers decided it would be appropriate just to give an update to DCGS as to where Operation Northmoor stood because it was in the papers.

Relevance to the investigation, nothing. I think probably just about a briefing of a senior commander to keep it in the echelons of the army to say, well, this is going on and, actually, here is the progress of an investigation which involves your troops.

Q. You wrote that the brief will be "deliberately bland".

A. Yeah.

Q. Is there any particular reason why you decided that the brief would or should be bland, rather than detailed?

A. Because it was the a secret investigation and he was not an investigating officer. He had no requirement to know any detail about an investigation and why should he? This is purely to provide information about: there is an ongoing investigation involving your troops and this is what's happening with numbers, but I could not give you any names or details of an ongoing investigation. It would be thoroughly inappropriate to have briefed him in detail on Operation Northmoor.

Q. You'd set out your reason in the document:

"DCGS is not in the investigation chain [and he]

will be provided an understanding overview only."

A. Yes.

Q. You've explained, of course, why it might be that DCGS, as a new appointment, is interested in knowing about the extent of the investigation possibly into a large number of individuals under the auspices of his command. In any way would the briefing of such a senior figure within the military cause ripples of concern amongst your team?

A. No.

Q. Did anyone think to themselves: crikey, DCGS wants to know about this?

A. I don't believe they did. It was very much a procedure for us, just to give an understanding to the senior command team within the army. If anything, more of an embuggerance to do another briefing, another briefing, another rehearsal to another senior officer who had no part of the investigation but it was just a formality.

Q. Were any notes kept of the briefing that he was given?

A. There should have been some notes because I would have briefed to AH Northmoor exactly what I was saying before I delivered that briefing, so there will have been a note somewhere saying about a DCGS briefing note as to what was going to be covered and rehearsed before it was presented to DCGS.

Q. Okay. There are certainly some briefing notes for a little later on. I don't believe we've found one in respect of that meeting but, if anyone else can lay a finger on it and correct me, I'm more than happy to turn to it.

Could we look, please, on in the chronology and on in the same bundle, to divider 78-2 and to another meeting which I'd like to ask you about, please. It's about a distinction, if there is one, between the Gold Group meetings and the Executive Group.

You've set out here in a policy file report for September 2017 that you will produce an update for Gold against the IRT recommendations. To summarise it very simply, you knew what the recommendations were from the IRT and were you simply trying to help Gold with what we've done, what we haven't done and where we've got to?

A. Absolutely, very simply.

Q. Then:

"Gold will attend an Executive Group and give an update to PM(A), DSP, DJEP *et al*."

Now, Gold updating PM(A), given the structure that there was in place, perhaps comes as no surprise.

A. Mm.

Q. Because, as you've told us, PM(A), was providing the strategic direction from wherever he got it but

providing that to Gold, Gold to you, you to your investigators.

A. Yeah.

Q. DSP, Director of Service Prosecutions, so the head the SPA, the Service Prosecuting Authority, in effect the principal legal adviser that's available to assist with the question of whether or not there might be criminal prosecutions.

A. Yes.

Q. So, in a sense that you can see value in him being briefed as part of an executive group, do you see such value?

A. Absolutely, because the Director of Service Prosecutions is ultimately who we would engage with, whether we went to -- whether we looked at referral for charge or didn't. So in terms of continuing an investigation or discontinuing an investigation, we would always have to engage the officers of the DSP for a Schedule 2 offence, which is what this was.

Keeping did the DSP briefed as to the ongoing investigation was, again, appropriate because he's, as you say, our principal legal adviser in such a high-profile case and, therefore, being able to ensure we are on the right lines legally, potentially, and actually we were looking in the right place and, if

there's any other suggestions from the DSP, would be the absolute appropriate level to be briefing at and the appropriate person.

Q. Just thinking about that for a moment together. At this stage, you have one investigation into Tyburn and you're scoping ten others.

A. That's correct, yes.

Q. In terms of how you, as an investigative team, might go about scoping, presumably the DSP is not going to be very well placed to advise on that?

A. No.

Q. So, in terms of any input from him, would it be focused on the actual investigation into Tyburn?

A. Very much so, and also just a briefing on where we were with the scoping, what we recovered so far, what we'd looked at, were there any concerns, et cetera.

Q. Then DJEP, what was your understanding of the need for DJEP being part of the Gold Executive Group?

A. My understanding was that DJEP was the link between Provost Marshal (Army)'s office and the ministerial piece. That was my understanding of it.

Q. So policy?

A. Policy, politics.

Q. Okay. This is an executive group which is considering potential future action by Northmoor investigators?

A. Correct.

Q. So within that group, you have the Head of the service Prosecution Authority and an individual representing the policy or political arm?

A. Correct.

Q. Then what is recorded by you here is that:

"He [which must be a reference to Gold] will deliver the update based on my report and provide recommendations for future investigative activity."

Now, you've told us that you weren't confident that Gold was in a -- sorry, that -- I'll rephrase that. That's not fair. I was questioning about PM(A) and I apologise to Gold:

"[Gold] He will deliver the update based on my report and provide recommendations for future investigative activity."

Is your entry there that Gold will be providing recommendations after there has been the discussion with PM(A), DSP, DJEP and others?

A. That will be correct. So I would produce the -- an update against the IRT report to say this will be the recommendations from the IRT, which have been accepted by Provost Marshal (Army) and therefore strategic direction. You're asking me for an update on the strategic direction, so I'd provide a report, an update

against those recommendations: what have we done so far? Have we identified the individuals? How many have we spoken to? What is outstanding and where we -- and how are we going to be try to achieve the outstanding actions?

That would then be briefed into the executive group and, if they had any further recommendations, that would -- or investigative suggestions, as it were, activity, further investigative activity, that would then be fed back to Gold, back down to us, for potential lines of inquiry investigating activity.

Q. In terms of investigative activity being set by Gold, you told us he's getting the direction from PM(A)?

A. Yes.

Q. PM(A) is getting the direction from Sir John Murphy --

A. Yeah.

Q. -- who are assisted by the IRT. But what role does either the DSP, DJEP or others have in setting the investigative activity --

A. None whatsoever.

Q. Can we move on in that particular policy file report on to the next divider. The reason for taking you to that, please, is that file reports for 18 September and you had a Silver meeting on 27 September. We can see that you are -- 79-2, please -- you are chairing the meeting

and your name appears at the top of the list.

Just briefly, if I may, if we look to item 7, which is part of your what appears to be Silver briefing:

"The Op Northmoor investigation to step away from Greater Manchester Police and NCA, in regards to review and oversight. Silver believes that no more support needed at present from either agency."

Is that correct? Did you or had you formed the view that the MIR(?) team from GMP or that Paul Williamson from the NCA weren't in a position to help with review or oversight?

A. At that point, yes, I had. Yes, I had. Having had the IRT come in the early part of that year, I hadn't had any real engagement with the MIRT or with the NCA personally. I'd met Paul Williamson once but Jason had had an awful lot of interaction with them. So when the IRT was brought in my only interaction with really outside agencies was really the IRT and actually, at the time, I had a lot of confidence with them, in terms of it was a new direction, we were moving forward with the IRT recommendations. So because I'd had no interaction with them and had been told that we were no longer being engaged with the NCA, as far as I was concerned, I had a Gold Commander, I had an IRT, Sir Jon Murphy, giving advice at a strategic level. So having not experienced

what they could bring to the party, as far as I was concerned, we were told we were stepping away from them and I had had no interaction with them to say, well, actually I need these guys. So I think my comment there was quite accurate at the time. I didn't feel I needed them.

Q. Yesterday morning when I'd asked you about whether or not you would have been assisted by a mentor to help you in your role, you agreed that would have been helpful and indeed you'd identified that someone of PIP 4 would be helpful?

A. Very much so, in reflection, absolutely, yes. At the time, that was a very, very silly thing to say. Probably -- yeah, a completely wrong thing to think about. But, as I say, at the time, that was the confidence I had in the IRT, in the strategic direction and Gold Commander. On reflection, in hindsight: wrong decision.

Q. The PIP 4 was the NCA Paul Williamson, wasn't he?

A. Absolutely.

Q. When was it, if you're able to help, that you realised that, in fact, your confidence here in the IRT might be misplaced?

A. I think, as I sort of alluded to yesterday, I think it was either the second review they did, where I sort of

began to start to feel that actually this was now becoming -- and certainly when we got to the forensic analysis of photographs, is when, as I mentioned yesterday, that it became quite clear that, even simple lines of inquiry like that, which were in essence essential, were being, "No, you can't do that". Then maybe I was thinking, well, actually, this might not be the team we really need to get us, push this forward, rather than just finding ways to close it down, as it were.

Q. In terms of the role that, at this stage, you thought the IRT might be performing to help you, if we look over the page to 79-3 and to entry 12?

"Silver identified that the IRT would be looking at housekeeping of investigative process. Communication Strategy now available and Intelligence Strategy confirmed in place."

In terms of housekeeping of the investigative process, what does that actually mean, please, or what did it mean to you at the time?

A. So, to me at the time, that was all about, so we briefed them on the investigation itself, we briefed them on the lines of inquiry we were taking, certainly based on their first recommendations, et cetera. What they then intended to do was actually have a look at how we were

doing the process of the investigation, were we in line with the current national standards of ensuring that we had recordkeeping, that we had strategies in place for things like, as I say, the communication, the intelligence? Obviously, one of the recommendations was to change the way we did our intelligence, our intelligence collection and, therefore, having an updated intelligence strategy in terms of policy, they were checking that: (a) it was in line with the current process; (b) we had one; and (c) that we were following it.

So the housekeeping, they'd had their look at what we were doing. Then it was a case of how we were doing it and making sure we were in line with current procedures. That's the housekeeping piece.

Q. So is this part of what you understood to be the review that they were conducting?

A. Of course.

Q. Rather than -- if we can draw a distinction between -- review rather than directing?

A. Yes.

Q. Okay's. If we just looked to paragraph 11 above, can I ask you this, please. "AOB" recorded:

"Confirmed Op Northmoor must entered at some point but at this stage only the 'investigative' side is

discussed."

Whose idea was it to raise the possibility that Op Northmoor must end at some point? It may be an obvious thing to say because everything will come to an end at some point but why is it that after the briefing that's taken place at the executive group, where DJEP, DSP and others are present, why are you now having a Silver meeting where you're saying to your investigators: this is going to come to an end at some point?

A. Because I believe -- when I took over, I believed it was very important that all of the members of the team understood everything that we were doing. I did find that when I took over, it was quite a close -- close groups as to quite -- *(unclear)* as to the way the guys were being treated and how they understood what Operation Northmoor was about. So by opening it up and actually bringing down from above what the thoughts were, so from the IAG, the executive group, whatever you wanted to call it, they would discuss it at a high level, yes, it needs to come to a close at some point.

I know DJEP often ask at what point is this going to finish? And the standard answer from Lieutenant Colonel Harvey was "It will conclude when it will conclude, I'm not putting a date on it".

But we all knew at some point, obviously with the

IAC recommendation, the drawdown of the 650 allegations in the first place, that at some point this investigation would end and, therefore, I believe it was appropriate to actually raise it in a room with the team that I had, so all the senior investigators, the heads of department, as a point to discuss, if required, just to let people know that, "Yes, this will not go on forever. Please be aware that we have drawn down a number of investigations already and that you must, at some point, acknowledge that, at some time in the future, there is no timescale on this, but it will end".

Q. In terms of how quickly it might end, can we go back to file 1 for a moment and to divider 31 and page 2 within that section.

It may be this is a sensible point to deal with before we have the mid-morning break, sir.

That persistent question from DJEP, you've just indicated, of "When will it end?" and the answer given by Gold "When it's appropriate for it to end", in terms of how quickly that appropriate ending might be arrived at, on 26 September you've recorded a policy file report here about the need to redo all of the DAS searches. So the digital archive system searches will now need to be redone because, as it turns out, in one upload they found an additional 2 million documents or files not

present when the original search was run.

A. Mm-hm.

Q. Fortunately for you, it was not 97 million, it was only 2.

A. So far.

Q. But in terms of that, as you've identified, causing unavoidable delay but not your fault --

A. Yes.

Q. -- always important to get the finger of blame pointed in the right direction early on.

A. Yes.

Q. You never know when the document might be asked of you in due course, but can I ask this, please: when there are questions being asked by DJEP of your team, "When will this end?" and you then discover there are an additional 2 million documents and all the searches need to be redone, did anyone go back to DJEP and say, "Well, you've just found another 2 million documents, you're not making life very easy for us"?

A. No, I don't believe they did but again, the -- for anyone to ask when will this end was just, as far as I was concerned, an inappropriate, silly question anyway because the investigation will go as long as the investigation goes. You continue to follow every line of inquiry, every breadcrumbs, until the breadcrumb

trail stops. How long that takes is how long is a piece of string. So actually, you know, did we need to go back to DJEP and say, "Well, actually just give us another 2 million files? It's going to take longer". Not as far -- as far as I'm concerned, we didn't need to because it was not for us to put a timescale and say to DJEP it will finish on 25/17 November/July 2019. That was not for us to do.

So it's -- this was more about showing that, actually, whilst there was delay, whilst we've -- the expediency of the investigation doesn't look good, from the file system we really need to start searches again because we may have missed something because, again, there are another 2 million files just been uploaded. As it happened, I don't recall us signing anything on there but that's not the point. You have to start searches again, you can't just ignore it because there might have been something hiding in there.

Q. In terms of the sort of information you were still waiting to get hard copies of, since the middle of 2015 you were aware that emails had been exchanged between N2108, who was SO1 Legal, at HQDSF, between him and the DSF --

A. Mm-hm.

Q. -- about the possibility of unlawful activity having

taken place on the DDOs that had been reviewed?
A. Yes.
Q. You were aware of those emails; did you actually have copies of them by September 2017?
A. I don't recall whether I did or not, to be honest with you, by that time. I may have done. I'm not sure.
Q. If you hadn't done, would they be the sort of important emails you'd want searched for through the 2 million documents?
A. Yes, and the 2 million documents, whilst it says "documents", they also refer to -- a document might be a file as well and, therefore, we weren't just looking for -- we weren't just looking for communications of emails or storyboards or whatever. We were also looking for footage of any description --
Q. Photographs?
A. -- photographs, not -- it wasn't just about looking for hard copy documents but anything else that may pertain or give us evidential lines of inquiry or evidence of -- to prove or disprove our hypothesis.
Q. Were these the sort of documents you'd been looking for, for now months, if not years?
A. Absolutely. Same thing.
MR GLASGOW: Sir, would that be a convenient moment for this morning's break?

SIR CHARLES HADDON-CAVE: Indeed, Mr Glasgow. I'll put a timescale on the break of 20 minutes. All right, thank you.

(11.20 am)

(A short break)

(11.40 am)

SIR CHARLES HADDON-CAVE: Mr Glasgow.

MR GLASGOW: May it please you, sir. Major, what I'd like to do is to look at what might be described as changes in approach, which seemed to arise at around about this time and, if they aren't changes in approach, you must of course correct me. But what I'd like to do to invite your attention, first of all, please, to tab 80. So file 2, tab 80. This policy file report comes hard on the heels of the various briefings and meetings that we've just been considering.

Allowing you to find your position, if you look to the decision in the middle of the page:

"All UK Special Forces non-serving personnel will now be spoken to. The focus will be on the command element. Should the Command element not be available for some time or not wish to engage I will interview the others first. Engage will be done once RFIs have been sent to HQDSF to confirm their known location and full background checks completed. Assistant Head Northmoor

will be before [any] action is taken [that's likely to be]."

That was a decision that you had in place towards the end of September. In terms of speaking to non-serving personnel, was it your decision as Silver that they should be spoken to by your investigating team?

A. Yes.

Q. Was that with a view to asking whether they could shed any light on what had or had not happened in the course of either Tyburn that you were investigating or now, at this stage, objectives 1 and 2, which were principally the focus of that scoping exercise?

A. Principally just Tyburn.

Q. Just Tyburn but still scoping the others?

A. Yes.

Q. Now, that decision you've recorded on 28 September. If we go on in the same file to tab 83 and about six or seven weeks later, on 13 November, you recorded:

"No approach is to be made with Headquarters DSF [in reference to] non-serving personnel until AH Northmoor has briefed DSF."

A. Yes.

Q. Now, would you accept there does appear to be a change between those two policy file reports?

A. Very much so.

Q. That at the end of September is a direction, in effect, that you are going to give to those under your command --

A. Yes.

Q. -- that they need to speak to the non-serving members of UK Special Forces and take accounts from them and now we have a different decision, which is that no approach is to be made until such time as DSF has been briefed.

Why was it necessary for DSF to be briefed about approaches being taken by your investigators to non-serving personnel?

A. I can't answer that. The decision was made by AH Northmoor and above that, prior to us engaging with those individuals, that AH Northmoor would brief DSF. The rationale for that was not provided to me.

Q. In terms of where it came from, at least as a decision absent any rationale, if we look, this appears to be non-concordance the direction at the executive meeting in September. That's the executive meeting I took you to before.

A. That's correct.

Q. So are we to understand from this that, following that meeting, at which, among people present included representatives from policy in the political arm DJEP --

A. Mm-hm.

Q. -- representatives from the prosecuting authority, in the form of the DSP, the PM(A) and others, that you were then told that you were not allowed to approach non-serving members of Special Forces until such time as the DSF had been briefed?

A. That is correct.

Q. Without wishing to attempt to draw any similarity between an organised crime network, as you've done yesterday, and Special Forces, just this: did it concern you in any way that Special Forces were being spoken to in advance of you wanting to speak to any member of Special Forces?

A. Again, as I say, it just added extra frustrations in terms of delay, that the requirement at that level to be -- for someone to brief DSF and cause additional delays for investigations was just absolutely unnecessary and we didn't feel any reason as to why we should have to do that. But that's the direction we were given that, whilst, yes, we've got now an overt operation, an overt strategy, get on with it, which is great, and then it was a case of, "Oh, great, stop, you're not to do anything until such a time we've briefed DSF".

Now I get, as I say, the rationale for doing that in

terms of why they decided at that level to do it, I was not briefed, the frustration for us being that we have now been given the opportunity to move on with the investigation, we're getting criticised for it not being expedient and yet all of a sudden we're being told that the head of the organisation that we were trying to investigate is now going to be briefed on whatever it is, whether the investigation itself, or just maybe the fact that we're going to speak to his troops. It just added another layer of why unnecessarily, and, two, more delay.

Q. Was there any concern on your part that, if DSF was briefed, that that information might trickle down to within the organisation?

A. It was always going to trickle down into the organisation. Now, we would always have had to approach, as I've said it in the previous policy note, about approaching the headquarters to find out where these individuals are so that we can engage with them. So they were always going to know we were going to speak to them at some point. It's just that, as far as we were concerned, another unnecessary layer of briefing which had no -- as far as we are concerned, no relevance to the investigation.

They knew we were going to come and speak to them

because we had to organise it through the unit anyway to find these individuals, so what was the point of having another briefing to say we were coming to speak to them, if that's what that briefing was? But, as I say, the contents of the briefing on what was briefed to DSF, I'm not aware of.

Q. In terms of whether this change in approach had any impact on those within your team, you having been given one direction at the end of September and a different direction towards the middle of November, can we leave that entry and go to file 1 together, please, and divider 37, to take you back to another of your notebooks, and within this section, it's 37-11, please, sir.

You've recorded your notes of a Silver meeting on 7 November, 37-11. For example, "Leigh Day update" is the first entry.

The next entry beneath it: "Strategies -- disappointed."

Who was disappointed in the strategy that was being provided through the IRT and Sir Jon Murphy to the PM(A), to Gold, to you, to your team? Were you disappointed or were your team disappointed or were all of you disappointed?

A. I think the disappointed bit may well be in terms of

where we stood with the updates on strategies, rather than the strategies themselves. If I recall from this, this would be me referring to the fact that I'd probably asked for updates to the strategies and they hadn't been update yet by the individuals. So this is more about our housekeeping, in terms of I've asked the guys to update strategies and provide us with the updates on strategies and they haven't been done. So I think on that one, that actually refers to my disappointment in our team not getting the housekeeping done, rather than what has been sent down to us.

Q. Okay.

A. If I recall correctly.

Q. Thank you. Before I make any other mistake, if we look down at the entries alongside the IRT and the last entry, "All against the IRT report." What does that mean, please, major?

A. I don't rightly recall.

Q. Well, you indicated earlier on that you weren't sure when it was that you had lost confidence in the IRT. Might this, or would it be unfair to conclude that this suggests that all at the Silver meeting are against the IRT report and the strategy that's been set by them?

A. That would be a good suggestion. If I'd written that at around -- at the Silver meeting, that may well actually

be the case.

Q. Because the Silver meeting, as you explained in your witness statement, provided you with an opportunity to get feedback from those within your team as to how they felt and what they wanted to do?

A. That is correct.

Q. Without putting a trite comment on it, it is a safe space for them to be heard about any concerns or disquiet they might have about what they're being asked to do?

A. That's correct.

Q. So if someone wanted to say, "I'm not happy, sir, with what you've asked me to do" or "I'm not happy with what you've said I can't do", would you welcome that observation from them?

A. Certainly. That was what the Silver meetings were there for: to have at that level with myself and the team leads throughout what was left of Operation Northmoor, to actually engage with them and find out what their opinions were from the IRT report. It was their opportunity to engage with me as Silver/SIO as to what they saw as our strategic direction, where we were going with the investigation and actually allow them the opportunity to voice their opinions.

Q. Well, this relates to a Silver meeting on 7 November,

which is, in fact, about a week or so before the IRT came down to visit for a further review. If we leave file 1 for a moment and go back to file 2, divider 84, and page 3, please, sir.

On 13 November Phillip Jones and Cliff Evans travelled to Newquay and commenced the assurance at RAF St Mawgan of the compliance with the recommendations they'd made in respect of Team 1 and the compliance with the recommendations they'd -- sorry, Team 2 first, Team 1 second, I apologise.

So they, that is the IRT, have come down to RAF St Mawgan, would it be fair to say, to mark your homework?

A. Yes.

Q. Okay. If the observations in your Silver meeting minutes are correct, they may not have been met with an entirely enthusiastic reception?

A. That would be correct.

Q. Okay. Insofar as they deal with the Team 2 recommendations, they are set out in paragraph 2 simply to observe that, as they regard the response in paragraphs 2.2 and 2.4, the Leggatt judgment has been applied vigorously and to good effect. Does that mean that, having looked at the principles set out by Mr Justice Leggatt, as he then was, in that judgment,

a conclusion has been reached that it's not necessary to pursue further investigation in respect of a large number of the claims?

A. That was correct.

Q. Okay. So to their mind vigorously and to good effect.

Then, as to 2.10 at the bottom of the page they have advised a "focus on complaints", which is the language that we had seen before, in other words to look and see whether there was actually any evidence of the complaint and, if not, to be able to get rid of that particular allegation. Is that a fair way of summarising it?

A. I believe it is. So the recommendation to focus on the complainants, as opposed to many varied complaints, yes.

Q. So rather than simply investigating an allegation because a complaint has been made, what they really wanted to do was: have you actually got someone who is making the complaint --

A. Absolutely.

Q. -- as the individual who was the subject of the problem that's being complained of?

A. That's correct.

Q. So not a lawyer but the victim --

A. Yes.

Q. -- or potential victim.

As to the recommendations that were made in respect

of Team 1, if we turn over the page, please, they are set out in section 3. As to that, please, we can see, can't we, that the ABE, the achieving best evidence interview, of Mr Saifullah -- Saifullah Yar is his full name -- had taken place at HKIA, Hamid Karzai International Airport --

A. Yes.

Q. -- between 9 and 10 September, so that is obvious progress in that regard. However, as to Mohammed Bang, we look at 3.3, he had not been well enough to travel and therefore he had not been interviewed?

A. Correct.

Q. So the two high-priority main lines of inquiry identified for your team by the IRT were first speak to Saifullah Yah and, second, to Mohammed Bang, and one of the two has been successfully been completed?

A. *(No audible answer)*

Q. Through no fault of your team, I hasten to add. If we look at the action that's set out at the bottom, in respect of Mohammed Bang:

"Only reasonable steps should be taken to interview him and further interview is unlikely to add any further value."

That's obviously predicated on the limited knowledge that was known about what he might be able to say.

A. Correct.

Q. Now, if I've understood both your notes and those of the IRT, this is a high-priority interview that should or must be conducted?

A. Correct.

Q. If one's focusing on the complainant, rather than the complaint, to use the Team 2 language for a moment, you have two identified complainants for the principal investigation your team are conducting.

A. Yes.

Q. (1) Saifullah Yah and (2) Mohammed Bang.

When you read an IRT review that told you that actually it was unlikely to help if you spoke to Mohammed Bang, did you agree with such an observation?

A. I think at the time, yes, I did.

Q. Did you not consider the possibility that he might in fact be able to add further value, if only he could be spoken to?

A. The whole point was that there were individual counts, and therefore, whilst we continued to pursue Mr Bang to actually get his evidence because he would have been -- potentially, a completely new witness. He was in a different vicinity of the location where this happens. Clearly, his evidence would be relevant and, therefore, we should try every effort to get his evidence.

But we did try, as much as we could, to get his evidence and it had been going on for quite a while. So whilst the priorities were to go to Mr Saifullah and Mr Bang, efforts continued to see if we could speak to Mr Bang but then we must continue with the other lines of inquiry. So whilst the priority was to do the two complainants, we had established one and therefore efforts continued to speak to the other complainant but as their recommendation was only reasonable steps, we had taken several reasonable steps going through LBC(?), they can contact him, there was difficulty getting hold of him, he was unwell, couldn't get to *(unclear)*.

We looked at Skype options, which under legal advice we were told actually weren't necessarily appropriate and weren't logistically possible either. To get the right team over there would have taken the security down into Helmand Province and logistically it just wasn't really an option.

So the recommendation, as far as I was concerned, was: okay, you've taken reasonable steps, continue to take reasonable steps to get hold of Mr Bang, but move on with the rest of it.

Q. Does it come to this: that unless Mr Bang can get himself to Hamid Karzai International Airport, you're not going to take a statement from him?

A. That is very much so.

Q. And it would appear to be the observation of the IRT to the effect that, even if you did interview him, he's unlikely to help, as in unlikely to be able to give any assistance to the investigation?

A. That was their opinion, as --

Q. What is yours?

A. As far as we were concerned, he was still another complainant who needed to be spoken to. Whether he was going to be able to give any further assistance or not we don't know and we never will because we never got to speak to him.

Q. Can we look over the page please to page 84-5 and the scoping exercise that was continuing in respect of the other ten DDOs that had been the subject of the TTP review in 2011. That is paragraph 3.10.

"The scoping to the ten similar events identified by M1466 and outlined in the Op A report dated April 11 has been thorough and appropriately focused with still images being recovered along with some associated reporting."

"Thorough and appropriately focused": bar the limited material that you've been provided with some time ago, had you been able to obtain any other photographs or documentation in respect of those ten

DDOs?

A. I recall that we managed to get some more photographs off the system. As I said yesterday, the storyboards, et cetera, that we were provided had limited photos on them, so we obviously went back to the searches and tried to identify and then request through the units all the additional photographs that we could identify from the system and anything they could. So any additional photographs or information, whether they be the SIRs, et cetera, were requested. I recall we did get more photographs but, other than that, that was probably about it.

Q. Did you feel that the scoping had been thorough?

A. As far as we could go with that, yes. I mean, it was continually -- obviously continued searches going on, on the IT systems, but scoping in terms of information that's there can only go so far. Yes, it had been thorough with what we could obtain, without speaking to anybody. And this was the point: you need to go from a scoping exercise. If you want to get any further, you need to do something, which is investigate properly and fully.

Q. It's one thing to ask if you can be given something and hopefully get it, that may be a thorough request without a thorough answer.

A. Yes.

Q. But in terms of advancing your inquiry as a scoping exercise at that stage, did you want to go a bit further than just asking for stuff?

A. Of course we did. Absolutely.

Q. What's identified as a potential action for your team to consider is prioritising operations 2 and 1. Now, you told us yesterday that originally when you'd been asked to reduce the number from ten down, you'd hoped for all, you'd settled on four, but had been told you could only have two?

A. Correct.

Q. When you met with the IRT in November 2011, did you provide them with your view that objectives 2 and 1 were likely to yield the best result?

A. I did.

Q. Okay. In terms of that prioritisation, they are identifying that you need to recover SINCREPs, OPSUMs, relevant SIRs, so if there were any SIRs, together with other material able to contextualise each event.

Beyond simply asking for that material as you had done already, were the IRT able to suggest any other means by which you might prioritise those requests?

A. No, that was the only recommendations they gave. From my recollection, the IRT weren't of the opinion that we

should be elevating the objectives 1 and 2 to investigative status in the first place. That was my request that we did.

Q. Major, if you still have it open, please, divider 84. Could we look together at page 6, so 84-6 and, in particular, paragraph 3.12.

What I'd like to ask you about appears almost to the middle of that paragraph. If we start on the right-hand side, five lines down, the word "the", do you see that?

A. Yes.

Q. "The continued scoping of operations 2 and 1 should permit completion of all outstanding main lines of inquiry by the summer of 2018."

How is it that the IRT reached the conclusion that you would have finished your investigation within the next seven months?

A. I think I recall from our discussions that that was a timeline that they thought would be appropriate, considering -- having briefed them what we had and what we intended to do in terms of our scoping exercise, that they thought that would probably be about the right length of time to -- not conclude but to -- yeah, it is to conclude the scoping part of our investigation.

Q. Do you agree?

A. I think at that time, yes. That was -- for the scoping

part of it, absolutely. There was only so much -- without going to a completely overt proper investigation status, where you're actually allowed to speak to people, which clearly would then extend the timelines to how long is a piece of string, purely just continuing to search systems for documents and review the documents we'd had, that was probably an appropriate timeline to say, actually, within that time, on the pace we have been doing, then, yes, another what we're talking, another --

Q. Six months or so.

A. -- six months would be about an appropriate length of time, if we'd found more files, if more files had been found, another 2 million for instance, then we'd extend that again. But based on what we had then, that was probably an appropriate timeline to say, okay, in six months' time we'll review it again but, by then, you should have reviewed your scoping exercise for those.

Q. In case anyone might misunderstand, if we just look at paragraph 3.12, does it not relate to Operation Tyburn as well as operations 2 and 1, as they're described?

A. It does.

Q. So in fact what's being suggested is that by the summer of 2018, everything in respect of either the investigation into unlawful killings or the scoping

exercise for unlawful killings will have been completed?

A. That is the way it is written, yes.

Q. Did you agree with that?

A. On reflection, that's probably not right because Tyburn again, that comes back to the how long is a piece of string, because we hadn't spoken to anybody. So you can't really put a timeline on the Op Tyburn investigation because you are then bounding it by a timeline, whereas the scoping part of 1 and 2 was probably realistic to say, yes, in six months' time you should have been able to at least be in a position to say I've reviewed as many documents as we can or have had access to.

Q. In any sense, might someone who was sat in the meeting with the IRT, who were now talking about a completion date of the summer of the following year, might someone reach the conclusion that that's when Northmoor is expected to end?

A. I think, if you -- if, from an outside point of view or someone actually sat in a room, they might well have thought that. But these recommendations would not have been seen by us until such time as they had completed this review. So whilst it is written down, those timelines and those -- the actual response, the actual physical recommendation that were done weren't discussed

with us actually in the room. We presented to them, they went away and then formulated their reports and then that was presented to the chain of command. So these timelines would not have been said to the guys, right, well that's it. These words wouldn't have been given to the guys on the day.

Q. Did they even ask your team "How long do you think it might take you to complete all the inquiries in respect of Tyburn and objectives 1 and 2"?

A. Certainly not for Tyburn but for objectives 1 and 2 we would have discussed what would be a realistic time set for the completion of scoping. Now, we -- as I say, the scoping part of it was -- there's only so much information you can have and, actually, there wasn't that much of it so, realistically, six months to look at a few documents and as many photographs as we could get hold of was about as much of the scoping you'd do. Well, six months is about right, to be fair.

Tyburn, again, as I say, you can't put a timescale on investigation.

Q. But scoping isn't what you wanted to do in respect of objectives 1 and 2, is it?

A. No, no.

Q. You wanted to investigate --

A. We did.

Q. -- and you wanted to ask questions of the people who were involved in those particular DDOs?

A. Absolutely.

Q. But what was being suggested as a course of action for you would be: ask for some paperwork; if you get it, review it; and then we can hopefully draw a line under it by the summer of next year?

A. Or review it again.

Q. Right. Do you think, if you'd said to your team "It's all going to end by the summer of next year", they would have been happy?

A. I don't think they would have been happy at all, no. There would have been a few people who may have been exhausted by the process and may actually think, well, we're not getting anywhere, fine, that's it. But the majority, I would have said, of the team would have been, "This is a bit daft that we still have not spoken to anyone". We can't just set timelines on completions of potential allegations and, certainly, when you've got a live ongoing investigation, say, well, it's all going to be done by next year. That would have definitely upset people.

Q. In terms of how the IRT reviewed you as a working team, can we just look over the page, please, to page 84-7. Reminding ourselves that you'd been told very recently

that there were 2 million additional DAS documents that might require searching. You still didn't have ITS1 available for you to search but that was something you wanted and that you had the relevant computer inboxes but you didn't yet have the necessary accreditation to switch it on?

A. Yes.

Q. The team concluded:

"In view of the further recommended refocus of the Northmoor investigation, the IRT do not consider there will be a need to use the enterprise large-scale forensic data handling capability located in the investigation suite."

Did you agree with that?

A. I think I did at the time. Yes.

Q. But what if ITS1 was suddenly given to you?

A. Well, we'd have used it.

Q. This is an outstanding inquiry that's been the subject of extensive internal investigation team correspondence, and you're still hoping that you're going to be given the important server, which might have information relevant to the inquiry.

A. That's correct.

Q. The facility that you have to examine the contents of that server is sat in boxes in the room next to you?

A. Yeah.
Q. And you're now being told by the IRT "You don't even need the boxes"?
A. No. No. I mean, that --
Q. In terms of what message that gives to you as the SIO, you're being told that you can get this done by the summer of next year, you don't need the FDHC that you've got but you're hoping to use. In any way does this give you the impression that, actually, your investigation is going nowhere?
A. Well, I think it gave the impression that they thought we had enough resources to be doing what we were doing, and that they considered that, actually, we were getting what we wanted by consent from the organisation we were looking at, and therefore the -- as they were concerned, the unnecessary expense to build the FDHC and the fact that we hadn't recovered all these thousands of hard drives that were expected, and that's why such a big forensic data handling capability was designed and was brought down, and I think because of all those factors, they considered, well you don't need it because you're actually getting the information you require at the moment by consent, which is a fairly reasonable observation, in all fairness, at that time.
Q. Were you getting it by consent?

A. Yes, what we asked for, we were getting. So if you identified the documents, a slow process of going back to the unit to identify the document, and then have it brought to us, but it's only what we could see.

You are quite correct, having the full ITS1 system and for us to be able to interrogate it ourselves, would absolutely have been the right thing to have done. It would have been independent. We wouldn't have been asking anyone for it, anyone asking for information from anybody. It would have been the correct investigative procedure for us to be having done it ourselves. We had the qualified people down there to use the kit, or were going to certainly, we just didn't have the kit in itself or the IT system to be ingested to actually review it.

So for a purist investigation, yes, we should have built it and, yes, we should have just waited, however long it took for it to be built, for the accreditation to be there and then for us to actually say we've interrogated it and we've either found or not found the evidence that we were looking for. That would have been the ultimate answer.

SIR CHARLES HADDON-CAVE: And you'd already spent 7.5 million on it?

A. Apparently so, sir, yes.

SIR CHARLES HADDON-CAVE: And it was in boxes?

A. That's correct, sir.

SIR CHARLES HADDON-CAVE: Was it going to take much more to get it up and running and speed up what you were --

A. It would have taken a while to build, sir, and the accreditation is still ongoing, so they couldn't build I because the accreditation for the building hadn't been agreed. But whilst the location was there, the room, et cetera, still -- there were still issues with the accreditation to be able to staff the build of the FDHC itself, before we could then bring the material down, store it correctly and ingest it. And by which time, as I said, there was then longer requirement for -- or believed to be no requirement for such a massive capability because they weren't going to recover the thousands of hard drives that they expected back in the very onset of Operation Northmoor.

SIR CHARLES HADDON-CAVE: What was involved with the accreditation of the building: a piece of paper?

A. Sir, I genuinely can't answer that one. I really don't know. My understanding was it's literally about the security of the building. Whether that was just bit of paper or whether that was people testing walls or whatever it was, I genuinely can't answer that, sir.

MR GLASGOW: When it came to housing the investigation at

RAF St Mawgan, wasn't that location chosen as the most suitable and sensible place to enable this level of data to be handled there?

A. According to the records I've seen, yes.

Q. So the location that you're in, with the boxes in the office next to you, has been specifically chosen so the boxes can be opened and their contents plugged in and put together?

A. My understanding was that it required the least amount of improvement to get it up to the security standard required. So there was no location from the documents I've read, from -- as they were trying to look at Northmoor. There was no immediate facility where we could just walk in, build it, plug it in. There was always additional accreditations that were required, security to be put in place, and then accredited by the gurus who say, yes, that is right now, you can use it. So it was basically -- St Mawgan was the least -- impact -- the least financial impact to get up and running fully.

All the other options were either discounted because they were non-starters, there was far too much money involved or just not the right option. This was -- RAF St Mawgan had the least amount of requirement to get it up and running in the first place and to be able to

accommodate the staff as well.

Q. Did RAF St Mawgan become the list of one?

A. From my understanding, yes.

Q. Can we look, please, on to page -- no, in fact further down we're still on page 84-7 already, can we just go to the "Conclusion", and in a gold star for the team:

"The IRT identify that they have been impressed with the organisation and approach adopted since our last review."

Can I ask you this: in any way did you consider that either the organisation or its approach had changed since the IRT had visited?

A. Well, they came in 20 -- the start of the year, so January.

Q. January, yes.

A. When the strategy was, the investigative strategy was of a covert nature rather than an overt nature. And, therefore, with a change in the IRT, we were then able to progress things such as finding -- actually speaking to one of the complainants, which was great, starting to organise witness interviews. So the change from when they had turned up and we'd not spoken to basically anybody, taken a few statements, they had made the recommendations and, as far as they are concerned, we had progressed the investigation by actually starting to

speak to people. So, yes.

Q. As far as you were concerned, had you progressed the investigation?

A. Yes, we had started to.

Q. How far had you progressed it? You'd started to progress it but how far had you actually got in the ten months?

A. Not as far as I'd like to have got but, with the limitations of tracking down the individuals and then having the -- the stop-start approach, in terms of your direction, you start moving, and then you're told to stop because someone needs a briefing higher up the level, and then all the delays that go with that. Then you have access to witnesses -- witness access to Mr Saifullah, for instance. Because of the time of year, we had the Roulements taking place in Afghanistan, which delayed our access in and out of the country itself, the security situation, then you have, on top of that, the cultural piece. So Ramadan Eid, where, quite rightly so, it was inappropriate to start pulling people away from their homes to interview. So, again, these layers of delays, whilst you have a plan in place, right, let's get on with it, actually, the "Let's get on with it" kept moving back because we couldn't get out to places, our witnesses weren't available because they

were in different places and then you have the tracking them down, those who can speak to us, those who didn't want to speak to us.

So great we had a plan in place. Could we have moved quicker? We'd have loved to. Were there lots of things outside of our control? Absolutely.

Q. Okay. As to the plan you had in place, the IRT continued with their conclusion:

"The atmosphere has produced valuable outcomes which have materially moved the Inquiry forward in a balanced manner."

Inviting you, perhaps, to put a slightly critical eye on, for a moment, the material forward movement that there'd been, how far had you gone forwards?

A. In terms of actual physical material?

Q. Well, in terms of making progress with the investigation in respect of Operation Tyburn?

A. Well, we had, as I say, we'd finally spoken to one of the complainants, great. We hadn't spoken to the second one. We'd finally started to take some interviews, great. So we had moved forward and it was good progress within the limitations of what we had.

Q. Then the last sentence on this page:

"Refreshingly, each of those persons interviewed by the IRT had been shown to be open and realistic about

the investigation and its outcomes."

What does that refer to? What is the realism that's been applied to the potential outcome of the investigation that the IRT team appeared to be happy about?

A. I can't really comment on who they spoke to and what they spoke about. So when they're asked about -- they're open and realistic about their investigation's outcomes. I'm not sure exactly who they spoke to and what the contents of those -- whose those conversations were. So I don't know what they saw or were reported to, or what their outcomes were.

Q. Obviously it will be for the authors of the document to explain but, insofar as there appears to be a realism about the outcome of the investigation, would it be unfair to interpret that as suggesting that that in some way people think the investigation is going nowhere?

A. I don't know because, actually, we'd gone from not doing an awful lot because it was a covert operation, into an overt operation. So I would suggest that, actually, at the time, people were starting to thinking, actually, we're now moving, we're actually doing something with this. So I would suggest that, potentially, people would be a bit more positive about the investigation itself because we were actually starting to do stuff,

starting to speak to people. But the outcome at that stage was never clear. We'd only just spoken to the complainant. We didn't have the full ingestion of -- and a full ingestion of all the witnesses, et cetera.

So outcomes and investigations at that stage, I think that's quite premature for them to be saying, well, there's an outcome of the investigation.

Q. Given where you were evidentially at that stage, could you predict any particular outcome at all for this line of inquiry?

A. It would have been wrong of us to actually start predicting at that time.

Q. There is a second version of this document which has an additional sentence at the end of it. If we just go on, please, to divider 85 and to page 85-7. It may well be that the first one we've just looked at is a draft but the difference that appears is in the last line of paragraph 6.2. What is written here is:

"The progress that has been achieved in the last year in almost every aspect of this enquiry has been quite outstanding. It is certainly beyond the expectations of both members of the IRT."

Would you describe the progress that you had made in every aspect as "outstanding"?

A. No. No, not really. Not -- like I say, it was good in

the fact that we'd actually started to make progress but I think "outstanding" is probably a little generous in terms of where we were.

Q. If anyone was looking at this document and considering the potential impact that the IRT might have had upon Operation Northmoor, if they read this conclusion, might they think to themselves, wow, the IRT have made a difference, the progress is outstanding thanks to them?

A. Very much so.

Q. If we think back for a moment to the list of jobs that they had effectively set you -- and that's you, your team, rather than you individually -- back in January 2017, if you just leave file 2 for a moment, go to file 1, tab 22 and to page 8.

It sets out their initial recommendations, which are provided in paragraph 9, 22-8; do you have that, Major? I do, yes.

Q. High priority:

"The planned visit to Afghanistan to obtain witness statements from both Mr Bang and Mr Saifullah and any other available evidence be progressed. Engagement with APU personnel should also be sought with a view to gathering further relevant intelligence evidence."

As to high priority 1, we've established that you

had spoken to Mr Saifullah; you hadn't spoken to Mr Bang thorough no fault of your own; but did you manage to speak to any member of the APU?

A. Not at that time. The decision was decided that actually what we were going to do is we were going to speak to the British forces first, given actually the timescale we were talking about, it would have been -- taken more time to then track down, as we found later on, to track down the APU. So as we had access -- straight off access to the British -- potential British witnesses, that was more important that we spoke to them first rather than actually the APU. That's the decision that was made at the time.

Q. As to high priority number 2:

"Efforts to recover datasets proceed by consent and not seizure."

We remind ourselves, of course, that that harks back to the approach that was being advocated by Captain Wright, then SIO for Team 1 at the time, when he wanted to go and seize ITS1 before further material could possibly be deleted from it.

A. Mm-hm.

Q. So far as obtaining ITS1 by consent, had you succeeded in that?

A. No, we hadn't. No.

Q. You had amended the categorisation of suspect status in respect of N1141 and N1201?

A. Yes.

Q. As to the ten similar events identified by N1466, did they continue to be investigated?

A. They continued to be scoped.

Q. With a focus on two out of the ten?

A. That is correct.

Q. No covert tactics had been sought or deployed?

A. No.

Q. Individual duty statements: you'd declined to take that approach, hadn't you?

A. We did, yes.

Q. And you tried to take statements from both serving and non-serving members of Special Forces but, as you've explained, in order to do so, you had to speak to DSF beforehand?

A. Yes.

Q. Or rather, PM(A) had to speak to DSF beforehand?

A. Make representation(?), yes.

Q. If one is looking at those identified recommendations back in January 2017 and marking the performance of the investigation against them as a metric, to describe your progress as "quite outstanding", might that be a little generous?

A. Very generous.

Q. In terms of how matters moved forward following that generous assessment in November 2017, can we leave file 1, go back to file 2, and now to divider 86, please.

The reason for taking you to this is because it is the briefing note provided for the call due to take place in December 2017 with DCGS, so this is an example of the briefing note that you hoped we could find in respect of the earlier meeting but we do seem to have one for December.

So this is three or four weeks after the IRT recommendations and assessment had been provided, and we can see that, amongst some of the investigation updates to be given to DCGS, if we look to the third bullet point:

"IRT. Review of progress and findings, excellent progress."

If DCGS was briefed in accordance with this note, would it be right, do you think, to say that there had been excellent progress made by Northmoor?

A. Well, on reflection, at this time, "excellent progress" again would have been a little generous but we had made progress, yes.

Q. Yes. So you had gone, to some degree, forwards?

A. Yes.
Q. But not perhaps as forwards as it appears to be being suggested you'd gone?
A. No, I'd agree with that, yes.
Q. Right. It --
SIR CHARLES HADDON-CAVE: Can I ask: what about high morale?
A. I think that at the time, there was -- a lot of people were happier because they were more involved. They had a better understanding across the whole of the Northmoor team. I gave -- I made a decision, sir, that, instead of stove piping it into just Team 1, what I did was I actually brought them all in and briefed them all on what we were doing. So I took the decision, instead of keeping Team 1 and Team 2 separately and the MIR not understanding what was going on, I brought them all in and gave them a whole briefing as to exactly what was going on, which to me made sense, which to a lot of people, actually, they found useful because it did increase their morale because they actually understood what they were actually doing down there in the building, which is fine.

There are others who did get the impression clearly from their understanding of the IRT that they weren't happy with the new direction.

So overall, morale, sir, I think did increase.

I think high morale is probably a good way of describing it but there were certainly some people who disagreed, as I say, with the IRT report and therefore some people and morale would have gone down because they may well have thought that actually it was coming to an end.

MR GLASGOW: Can I ask one further question before I anticipate there may be a request for a short break, and it's this: when it comes to the assessment of morale, the Inquiry has received quite a lot of evidence about the impact that working at RAF St Mawgan had on people.

A. Yes.

Q. The fact that a number of people struggled with their health?

A. Yeah.

Q. That people weren't able to undertake the courses that they had want to do. That people were separated by some considerable distance from friends or family or support networks. Is that something you had recognised as a problem within the teams that you managed?

A. That was recognised well before I turned up.

Q. As to the note we were just looking at please, Major, if we look at the other bullet points that appear under "Investigation" can I ask you, please, about the last two entries, first as to manning and then as to look

forward.

So as to manning:

"Draw down to 80 persons, 1 January and then continue downward trend over first six months of 2018."

In terms of the drawdown and a downward trend, if the observations of the IRT, that you be able to complete your inquiries by the summer of 2018, are correct, would it be of assistance to you to have as many people on hand to help with the either investigation or the scoping?

A. It would but, as I mentioned yesterday, there's only so many people you can have, with a -- looking at limited material. So the numbers we had were appropriate for the Team 1 investigation and they were uplifted when we had Team 2 sort of drawing down, as it were. So we did pull some people across and I realigned the unit into a -- once Team 2 had finally completed what they were looking at, the structure of Northmoor, as it was, was restructured into different teams.

So yes, an uplift of a couple of people was great, but to actually have what had been potentially -- I mean 80 is quite a lot -- but a significant amount of say Team 2 coming across to Team 1 wouldn't actually have been very helpful because we weren't actually at a full investigation stage at that stage and the people

involved were limited and therefore we only needed access to them, we needed small teams to go and speak to individuals because of their availability.

It wasn't like, it wasn't like a normal regiment based in, say, Colchester for instance, where you could parade the whole regiment of 600 and have an influx of 200 Royal Military Police officers, and each take -- that would have been useful. But because of the access to the witnesses that we had, you didn't actually need 100 police officers sat around waiting to conduct potentially what was two interviews a week because that's the only access we had to our witnesses.

Q. Well, that's if there's a focus, of course, on the investigation into Tyburn --

A. Yes.

Q. -- and the continued prioritised scoping for objectives 1 and 2.

A. Of course.

Q. You, of course, wanted the remaining eight DDOs to at least be scoped, if not be investigated?

A. Yes.

Q. At any stage, did you say to Gold, Lieutenant Colonel Harvey, or ask that PM(A) be spoken to, to say, "I might have 80 spare officers in a couple of months. I really want to look at these other eight DDOs. Can I have them

just for six months and we'll see what we can do?"

A. At that time, there was no requirement because the scoping exercise, as I've said, was so limited to what the information we had, the team themselves, Team 1, were doing that. There was no requirement to have the additional manpower to look at another two documents. Just wasn't.

Q. Would the manpower allow you to investigate, rather than just scope?

A. We weren't investigating that, that's the thing.

Q. No, would it have allowed --

A. Would it have allowed us? Potentially, yes. But again, not with 80 people. 80 people would have been a little excessive. That said, when we discussed this about the drawdown, it was noted, it was always noted in discussions that, actually, should any of the other ten come to fruition and actually require investigative status, we would be requiring some manpower back. So it was noted that actually don't strip out the unit completely because you never know what's round the corner.

Q. So there ought to be something either in brackets or at least as a footnote, as an FYI, "We might actually need some people back in due course"?

A. Of course.

Q. Okay. How long that might be, that you would have an opportunity to bring people back in, may be determined by the next bullet point:

"The DCGS is either being invited to look forward to, or will be able to look forward to, close down of the investigation."

A. Yeah.

Q. This is December 2017.

A. Yes.

Q. You have been the SIO for Team 1 for only six months. You've been Silver for just shy of 12 months. In terms of looking forward to the close-down of the investigation, did you look forward to the close-down of the investigation?

A. Personally, I don't -- closing down an investigation was never really -- was not my focus. It is always in the back of your mind because of the fact that actually, something will then -- something will come to a conclusion but, apart from having the considerations of there may be a future, there may be a requirement for disclosure in the future, for instance, and then what do we do with the material, et cetera. So that had to be in our mind all along. But there was no, right, well as far as I was concerned, you need to have this in place by this date because, as I say, how long is a piece of

string?

A closed down investigation should be either with a positive or -- either you either prove or disprove the allegation. So either way would be great but, looking forward to a closed down investigation, we just wanted to get on with it, is what we wanted to do. The end -- the close of it is irrelevant. The considerations for disclosure, et cetera, were relevant because you need to consider them throughout the investigation but actually a closed down investigation, not really considered.

Q. I mean, is there a difference between, for example, an end state and an exit strategy?

A. Yes. I would say.

Q. The end state is where you as the investigators wanted to get to --

A. Yes.

Q. -- which is either there is evidence to look at or there isn't evidence to look at?

A. That's correct, yeah.

Q. So in our assessment, you prove or disprove the allegations at least to your satisfaction?

A. Yeah.

Q. That's your end state. The exit strategy, is that a means by which something can be brought to an end and those involved can get out of it?

A. Yes, yeah.

Q. Might there be a difference in the briefing here that the briefing relates to an exit strategy rather than an end state?

A. I don't know what was actually the -- what was briefed within this to DCGS. So I can't comment as to whether it was to do with the exit strategy or whether it was about, oh, this -- an end state, a closing of Operation Northmoor.

Q. Okay. I mean, where you were in December 2017, were you able at that stage to work out when you might have reached the end state point?

A. No.

Q. There are other entries on the page and, again, of course, as with any other document, I will deal with anything that anyone wants me to, but I was going to ask you about policy, if I many, for a moment. The reason being that I'd already asked you about DJEP and you'd identified DJEP as being the policy or political part of the MoD that had some involvement in Northmoor via the Executive Group?

A. Mm-hm.

Q. "Peter Ryan visit to St Mawgan -- purpose and effect."

In terms of Peter Ryan, the Director of DJEP attending RAF St Mawgan, would it be normal for someone

from the policy or political arm of the MoD to pay a visit to the investigative centre of an operation such as Northmoor?

A. It certainly wouldn't be normal for any -- for a man of that ilk to visit any investigation that I'm aware of. Whether the chain of command thought it was appropriate because of the enormity of Operation Northmoor, again, is something for them to provide answers to.

Q. "Liaison with SPLI."

Is that service police legacy investigations?

A. It was yes, yeah.

Q. Okay. Does that hark back to IHAT?

A. It does, yes.

Q. What, if anything, was the level of liaison that was taking place with the SPLI?

A. My understanding was that it was done at Gold level or above, to understand what they were doing with their exit strategies, what they were doing, if there was anything they could learn at that level. But that was as much involvement as I had with SPLI.

Q. In terms of what might happen with policy, MINSUB, so a ministerial submission, being provided before the Christmas stand down. Did you have any involvement with the information that might be provided to a minister or ministers?

A. If there was requirement to provide information, they'd ask me. So if it's things like numbers, where we stand, I would provide Gold information and then he would do whatever he did with it in terms of pushing it up the chain or creating MINSUBs. Yes, I recall being asked for updates on where we were, facts and figures, knowing that we were going to go into a MINSUB but as in me creating the MINSUBs and delivering those, it's not my responsibility.

Q. Understood. Just before we leave this, Peter Ryan, who you described as being surprised that someone of his ilk would visit the investigation, by "ilk", do you mean his seniority?

A. Yes, yes, his seniority and position because, again, he's not an investigator. It's not passing the investigation -- so your DSP, your advisers, like Sir Jon Murphy, Mark Ellison, absolutely appropriate once in a while, because they were giving the advice, that they'd got an update. But, again, Peter Ryan, yeah, great at ministerial level but why?

Q. Is that the sort of question your investigative team might have been asking themselves?

A. Yes, I'm sure they did.

Q. "Did anyone just see Peter Ryan walk down the corridor?"

A. But they don't know who he either was or was a very

senior individual who has come down to be briefed.

Q. "Why are DJEP here?"

A. Well --

Q. If anyone asked you the question, what would you say? Could you help?

A. You wouldn't be able to give them an answer, to be honest with you.

Q. Is there a risk that if people either recognise Peter Ryan or know the name Peter Ryan or know about DJEP, is there a risk investigators might think to themselves "What are DJEP doing down here?"

A. I don't think they would have understood what DJEP even did, so I don't think there was any danger of them wondering as to who is this guy? It's just a case of someone else from a very senior level who needs to be briefed and therefore we will brief them. Very simply.

Q. Did you wonder what he was doing when he popped down to Northmoor?

A. It was always nice to see him but, apart from that, again, the relevance of briefing DJEP is one of those things which you never really understand but, as a soldier, as a soldier-first mentality, and also as an SIO, if your Senior Chief Officer says that you are to brief these people, then there must be a rationale out there in the higher echelons that they've decided this

is the right thing to do. So you brief them.

Q. In terms of how the investigation itself was now to proceed, you had of course the IRT assurance in the middle of November, briefing has been provided to DCGS. But if there are any doubt that the IRT team was still important to how Northmoor would proceed, can we look on to the next divider, which is tab 87, and to page 87-2.

Recorded here by you, SIO Team 1:

"The investigation will now move forward and in accordance with the IRT report recommendations and within the framework of the recommendations."

Is this you recording for posterity, if necessary, that it is the fact that it is the IRT who are setting the investigative direction.

A. This is exactly that.

Q. You've set out:

"The IRT report [under the 'Reason' section] was presented to PM(A) at the Executive Group on 14 December. The records of decision, whereby PM(A) accepted the recommendations, was received on 9 January. These recommendations form the direction from PM(A) to Gold and therefore to me as Silver as to the direction of the investigation and will be followed accordingly."

So, in that sense, do we see, if I use it inelegantly, the chain of command that appears to be in

operation in Northmoor?

A. Yes.

Q. It appears to be IRT to PM(A) and, as you understood it, was that via Sir Jon Murphy?

A. Correct.

Q. So it's IRT to Sir Jon Murphy, to PM(A), to Gold, to you, to the investigators.

A. That's correct.

Q. At any stage, did the investigators, you or Gold, if you knew it, have an opportunity to say, "This isn't the way we want our investigation to run"?

A. Apart from having discussions on their visits, the recommendations were not therefore -- were not challenged by us, were not allowed to be challenged and say, "Well this is what we're going to do". If you note that I put in the policy "Where necessary inappropriate lines of inquiry may change", that was me allowing us to say, okay, great, well the IRT recommendation, for instance duty statements, we're not doing them. We're not doing them. So where I was able to say, "Right, we're not doing it" and then get agreement with Gold for things such as the duty statement, which Gold did agree with, we, to be honest with you, ignored that recommendation, although it had been accepted by the chief constable -- our chief police officer, and then

given us our strategic direction down to tactical direction, if you like, there were occasions where we quite rightly just said, "Look, we are going to ignore it because it's not right and it's not the way we should conduct it".

However, the more direct policies, as I said, and I broke them out into individual ones -- directions, sorry and their directions were broken down into individual ones, that's where some of the you're not going to do covert, for instance, clearly had to be followed, whether we wanted to or not. And actually some of those I agreed with, so that wasn't a problem. But when we look and they start going the next IRT report and the next recommendations that just continued to scope 1 and 2, that's when we started to -- I certainly started to feel that we're starting to rub because that's not the way we want to run it. I had already recommended and said we needed to push forward with it but the IRT disagreed and said, "Actually, no just keep scoping".

So even discussions with Gold saying, "No, we need to do more than this now", because the recommendation had gone up and then come back down as "No, you will do this", that is what limited us in a tactical level to not be able to step outside the wire and say, "Okay,

we're going to ignore that", which is going to go to investigative status.

If you look further on, you know, I have had to present up to actually get -- therefore get agreement, and at the higher level, to get 1 and 2 elevated to be able to investigate fully, which took quite a long time, then. And that was very much against what the IRT had started to recommend but we had to push forward with it.

Q. In terms of who was directing the investigation by now, who was it?

A. At the big decision level, clearly, PM (Army) under the advice of Sir Jon Murphy.

Q. But was PM (Army), as far as you were aware, able or confident enough to take the decisions or was he simply doing what he was advised, as far as you saw it?

A. As far as I was concerned, every decision had to be -- every recommendation, every decision, was run by Sir John Murphy before a -- before PM (Army) were making a decision to say this is what we go forward with.

Q. Alan Pughsley observed, as one of his preliminary conclusions that, in effect, the IRT were directing Northmoor.

A. Yeah.

Q. Would that be a fair conclusion for someone to draw, looking at the way their recommendations were being

adopted --

A. Yes.

Q. -- and passed down?

A. If you look at the timelines of when we were then receiving direction, it would go, the IRT would come down, they'd chat to us, they'd do their reports. Then there had to be a briefing and a meeting before the IAG or the executive group, if that's what they want to call themselves that week, met up with Sir Jon and PM (Army) and we get a decision come back down which was basically the IRT report saying, "That's your direction" so whatever the IRT said was then agreed at the top level and then sent straight back down as "That's what you're doing next", and with a little wiggle room at our level room to get what we wanted done.

Q. Perhaps the way to best demonstrate the lack of wiggle room is if we go on in file 2 to tab 89, please, and to page 89-2, which a subsequent policy file report from 12 January, in which you dealt with the scoping of the ten similar incidents. So prioritisation to objectives 1 and 2, in order to recover SINCREPs, OPSUMs, OSW, relevant SIRs and any other material.

Then what you wrote as to the reason:

"... the IRT report dated November 17 accepted by PM(A) December 14 lays down the recommendations with

regards to the continued scoping of material for the other 10 incidents ... As such, in accordance with this being accepted as direction, Northmoor will continue to scope these incidents, prior to investigative status being considered."

A. Yes.

Q. Did you agree with that direction which was part of the IRT's recommendation?

A. No, because I've said we pushed at the time to say that this -- this scoping can't go on, what more scoping do you want us to do? So as you saw in their recommendations, to recover the SINCREPs, OPSUMs and OSW. Well, we'd already done a lot of that already. There was only so much more we could do with that knowing full well that, once we had said we've got all this and we've reviewed it, we would then have to invite the IRT back down again to say whether or not they would agree with me that we should elevate this to a full investigation status.

So it was just, as far as I was concerned, a further delay because, as I say, there's only so much scoping you can do without having full access to witnesses, et cetera.

Q. Insofar as that scoping was concerned in respect of Objectives 1 and 2, and we'll come to it a little later

on, did you conclude that, in effect, you hadn't really made much progress at all?

A. Sorry, in terms of?

Q. In terms of the progress on the scoping.

A. Yeah.

Q. Did it come to this: that you weren't really able to take it very far at all, with what you've got?

A. What you've got is what you've got. So once the "scoping" -- in inverted commas -- is done, in terms of you've recovered the OPSUMs, the OSW, there's not really a lot more you can do. You were looking at documents, without being able to actually do something with them, present them to somebody, and question the authors on it, and speak to the people who were the potential witnesses on the ground, there is nothing more you can do. The scoping is just -- is looking at documents and searching for stuff.

That can be completed, as I said previously -- you know, realistic timelines for finding four documents and looking at them, if that's all exists, a week. Now we need to move on.

Q. I mean, if you wanted to make real progress in respect of that scoping exercise, would there be any sense in trying to speak to those who'd been involved in the original review back in 2011?

A. That would have been useful but, again, can you start to speaking to people? That's witness statements and, to take witness statements, I required authority from PM (Army) to acknowledge that we were going to do more than just recover some documents, which is what they considered and the IRT considered to be the scoping part of it. Actively speaking to people was not part of their scoping -- their understanding and our understanding of what they saw as scoping.

Q. Just jumping ahead of the sequence, if you may, just finishing this point before lunch, to see what progress you were able to make as regards the scoping. If we turn to divider 99 and to page 2 within that section, we have a policy file report for August 2018.

So by anyone's best guess, we've reached the summer of 2018, by which time it seems that the IRT had hoped you would have completed all the enquiries.

You've identified here a desire to re-interview N1466 and 1788. That's in connection with Objectives 1 and 2.

A. Yeah.

Q. I'll pause whilst you clarify anything that you need to.

Insofar as your desire to speak to them, rather than simply asking for the provision of documentation, you set out as to your reason:

"... priority must be given to N1466 and N1788 before any further actions in relation to Objective 1 and 2 take place."

So did you regard them as significant witnesses or important witnesses that you, as an investigating team, needed to speak to?

A. Very important witnesses.

Q. Right. Then, if there is an impediment in your path to speaking to them:

"DSF need to be made aware of the intention to investigate these Ops before action is taken. Therefore the sequencing and engagement by Assistant Head of Northmoor is crucial."

A. Yeah.

Q. So even when you do identify a need to speak to particular individuals above and beyond simply asking for documents, would it be unfair to observe that you appear to find that there are at least delays being placed in your path, if not blockages?

A. Again, the comment I made there is to show that actually, whilst this is what I want to do, before I can do it, I've been told that the SF needs to be made aware of what we're doing before we do it. And hence the -- another further delay to the investigation.

SIR CHARLES HADDON-CAVE: Did SF need to be made aware of

what you were doing?

A. Sir, not in my opinion, sir. But again, that's -- that is the -- those above me deciding that, actually, it was appropriate that he was briefed. As far as I'm -- again sir, it wasn't necessary, as far as I was concerned. You know, we'd identified lines of inquiry, we'd identified people we want to speak to. Whether it was just they thought it was appropriate that that was done, well, it just slows investigations down. And what's discussed in those meetings we were never aware of, so I don't know what was said.

MR GLASGOW: Sir, would that be a convenient moment? I'm reminded that it is now in fact 1.01.

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

We'll break now, please, until 2.00; all right? Okay.

(1.01 pm)

(The Short Adjournment)

(1.58 pm)

THE USHER: 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 10-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, a 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 recording 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 materials 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 have the power to fine or imprison anyone to have been in breach of the Order.

(2.02 pm)

SIR CHARLES HADDON-CAVE: Right.

MR GLASGOW: Sir.

SIR CHARLES HADDON-CAVE: Good.

Mr Glasgow.

MR GLASGOW: May it please you, sir.

Major, just before lunch we've been looking at the influence, if that's the right way to describe it, of the IRT and Sir Jon Murphy and how direction or strategic direction was passed down through your team to you.

In order that we can perhaps clearly understand the

way you regarded the line of reporting coming, can we have your help, please, in file 2 to tab 93. I'm taking you to one of your policy file reports, this time in May 2018. File 2, divider 93, page 2.

You wrote:

"Sir John Murphy will be briefed and updated on the 10 DDOs ..."

Those are the additional ten from the TTP review that were going to be scoped at best. Is that right?

A. Yes.

Q. As to the reason, you've written:

"As PM(A) mentor, it was agreed following the briefing in May that Sir Jon should be briefed prior to the next Gold Group in order that he could provide advice on the future of the investigation and enable PM(A) to make decisions at a strategic level."

In terms of Sir Jon Murphy being an appropriate mentor for PM(A), might someone with Sir Jon's experience and proven track record be a good candidate as a mentor for PM(A), who some might suggest lacked the SQEP to head up Operation Northmoor?

A. I'd absolutely agree.

Q. Again, it will be of course in due course to Brigadier Neal to explain how he leant, if he did, on Sir Jon and the weight he placed on Sir Jon's advice but, if one

looks in terms of experience of the two gentlemen alongside each other, Sir Jon Murphy had been the national lead for policing --

A. Yes.

Q. -- and someone in whom perhaps one could place a degree of confidence when it comes to strategy for police investigations?

A. Yes.

Q. So whilst you have seen the influence of the IRT through Sir Jon to PM(A) and then down to you, from PM(A)'s point of view, might he see some value in going to an expert to help him take the decisions that he might lack the expertise to take on his own?

A. Absolutely. If you employ an expert, why would you ignore their advice? To be honest with you, would be the correct way of looking at it.

Q. As you've rightly identified, it is advice and it's entirely a matter for PM(A) whether he accepts it or rejects it but it would seem that, having got an expert on board who has advised him, he has accepted that advice and has acted in accordance upon it.

A. Correct.

Q. Perhaps an obvious example, that can be seen if we turn back one divider to divider 92. A few days later:

"N1799 and N1201 are to be interviewed again and

asked about the details of the Op A allegations/ suggestions. This will be done following consultation with SPA and the Gold Group ...

"Following the briefing to Sir Jon Murphy on 17 May his advice was that N1799 and N1201 MUST now be spoken to with regards to the alleged conversations. PM(A) has accepted this advice and given direction ..."

If we just think about that as an example of what might be said to be advice from an expert being effective and effecting a line of inquiry, Sir Jon has advised or offered advice that N1799, who has reported the conversation he said he had had with N1201 about the unlawful killing of all fighting-aged males on target, regardless of the threat they posed, as well as the staging of photographs to give the impression that the deceased had a weapon in their possession that they didn't have at the time they were killed.

So as you'd already agreed, possibly important information.

A. Mm-hm.

Q. But is Sir Jon's advice here to see if it's possible to convert that information into evidence?

A. Yes.

Q. It might, in this room, looking back now, seem an obvious step to take when you have information that is

not yet in an evidential form but you want to be able to rely on it as an investigator, the steps to go through are: how do I get the information into evidence? Who do I need to speak to? What do they need to sign and what product do I need to end up with?

To your mind, that advice, provided by Sir Jon Murphy, must be sensible advice?

A. Certainly, and certainly in this -- on this occasion, very, very clear sensible advice and I said when you have an adviser, if the advice is clear -- clear and quite simply, if you put, you know, *(unclear)* of very evidential value, why wouldn't you accept that advice and turn into direction?

Q. Without sounding critical of the advice that is given, with respect to Sir Jon, it's not exactly rocket science, is it?

A. I would agree, it's not.

Q. In terms of "I have information, I want it in evidence, how do I do that?", are those relatively basic steps that an investigator needs to go through in his or her mind?

A. Absolutely.

Q. The obvious relevance of that information to your investigation and scoping exercise doesn't really need to be stated, does it?

A. It doesn't, no.

Q. That is information that you -- when I say "you", I mean the investigation -- had had in its possession since 2015 --

A. That's correct.

Q. -- and you had had in your possession, as the SIO for Team 1 since certainly, as SIO, July 2017, as Silver, since January 2017?

A. Correct.

Q. But here we are in May 2018 and Sir Jon Murphy is stating the obvious: you need to do something with this line of inquiry?

A. Yeah.

Q. Would it be unfair to suggest that that's an inquiry that could or should have been progressed sooner than Sir Jon flagging it in May 2018?

A. The advice was to go back to them, so we had already spoken to these individuals and, as you're aware, they were only so much forthcoming with what they were going to say and how much information they would give us. So the decisions were made that, actually, if they weren't going to engage with us to start with, then we'll just put them on the backburner, hence why they were left. They'd been spoken to but then left alone because of their engagement.

The advice to then go back to them again and try to bottom out one last time, "Are you going to give us the information?" et cetera, et cetera, or any further lines of inquiry, was again, a right decision, one that was considered, absolutely. But we then -- at the time, we had focused on the IRT recommendations being the primary lines of inquiry, as it were and, again, this is going back over strands of evidence which potentially were or could have produced further lines of inquiry.

So we'd already spoken to them, they hadn't been initially forthcoming as we'd hoped and, therefore, going in the process of the IRT recommendations, given the lines of inquiry that we had, potentially positive results with or positive engagement with, this is almost like a review of certain strands of the investigation where, yes, it's necessary to go back to see them.

Q. You are quite right that N1799 had been spoken to in connection with the Op A inquiry and he'd given you information that what he'd written down was true --

A. Yes.

Q. -- but he'd declined to assist --

A. Yes.

Q. -- and, as you say, put on the back burner and no efforts for some time to speak with him again?

A. Yes.

Q. As to N1202, he'd been spoken to in connection with Operation Tyburn and Objective 1. He hadn't yet been spoken to in connection with Op A.

The Op A didn't take place until March 2019 so, with respect to you, it would be wrong for anyone to think you were being asked to go back over an inquiry that had already been made. It hadn't been made one by one.

A. With regard to that element of it, yes.

Q. Well, that element is quite important, isn't it?

A. It is quite important, I agree.

Q. So, again, would it be unfair for anyone to think that, if it took Sir Jon Murphy in May 2018 to point out this needed to be done, that that might suggest it was a bit slow on your collective parts not to have done it before now?

A. You could argue that.

Q. Okay. It took until March 2019 for eventually that inquiry to be bottomed out?

A. Yes.

Q. I mean again, harking back to the observation of outstanding progress, might that be a point where you'd cross out the word "outstanding" and possibly replace it with "lack of"?

A. "Slow".

Q. Can we have your help, please, with the same file but

now to divider 159. We're going to the Executive Gold Group meeting notes from June 2018, divider 159, page 12.

Doubtless everyone will realise there is not a date at the top of this page but I have suggested June 2018 and, as ever, I welcome correction if I am wrong but, for the avoidance of doubt, if you turn back two pages in the bundle, the agenda for the Executive Group is dated 6 June 2018. This appears to be the speaking notes attached to that meeting.

A. *(No audible answer)*.

Q. We can see a collection of individuals who have attended. Present will be PM(A); Assistant Head Op Northmoor; Assistant Head Policy; Gold; Sir Jon Murphy; Andrew Cayley, the DSP; Darren Read, the deputy DSP; Stephen Kell, a lawyer attached to the SPA, who had been deputed to work directly with Op Northmoor; Mark Ellison, as then Queen's Counsel, the other half of the Independent Advisory Group with Sir Jon Murphy; and then Peter Ryan, policy political from DJEP.

Would it be fair to observe this appears to be a relatively high-level, in terms of experience and position, meeting?

A. Yes, it would.

Q. Right. Again, I don't mean it as a discourtesy to you

but, in terms of investigative presence, it appears only Gold has made the cut?

A. That's correct.

Q. Gold provided an update, as we can see at paragraph 3, in respect of Team 1, Team 1 of course being, as we know, the investigations into unlawful killing, and what is written as the briefing note:

"With regards to Team 1 matters and particular the complaint by Mr Bang and Mr Saifullah (Op Tyburn) ..."

They're represented, as we know, by Leigh Day. Then:

"Good progress has been made by the majority of the IRT recommendations."

I pause simply to observe that you don't agree with that.

A. *(No audible answer)*

Q. Mr Saifullah has been interviewed; Mr Bang has not.

As to witnesses, personnel from UK personnel on the op have been spoken to, those who have been deployed have been spoken to and those who are not serving are yet to be spoken to because some are living abroad. The remainder have either refused to speak to us or are not traceable/contactable. We've identified several lines of inquiry still to be bottomed out: FMV footage.

Might that be an important line of inquiry that

hasn't yet been bottomed out.

A. Yes.

Q. "Support staff", in other words other individuals who might have been present on any of the DDOs who might have either seen something or heard something. Again, might that be an important line of inquiry?

A. Yes.

Q. Particularly since some of them might be independent of Special Forces and might not suffer from the regimental amnesia you've commented on?

A. Yes.

Q. APU personnel. Again, you'd already accepted an important line of inquiry?

A. *(The witness nodded)*

Q. Then "Evidence" and, as part of the briefing notes for the Gold Group, what is written here:

"There is no tangible evidence, at this juncture, to support the allegation. A Form 3 has been submitted to the overseas offending team, for agreement that the EST [the evidential sufficiency test] is not met."

Now, this is June 2018 and a form 3 is the request for legal advice that is sent to the SPA and, in this instance, when it is for agreement that the EST is not met, might that suggest that someone has prepared a legal advice note for the SPA by June 2018, in which

it's being sought agreement that there isn't enough evidence to prosecute in respect of Op Tyburn.

A. At that time, yes.

Q. If that decision is reached in June 2018, is that then an end to the investigation?

A. No. Because it is -- as far as we are concerned, a form 3 not just about -- it's not just an end to investigation; it is getting agreement with the OOT, with SPA, that, at this current stage, there is not enough tangible evidence. That's not to say there aren't still lines of inquiry but it's an agreement to say it's almost like a stop check to say, okay, at the moment we've been going at this quite while, we now -- we have so far done X, Y and Z. We'd now like your view as to whether or not you agree that currently the EST is not met.

Clearly, there are still lots of lines of inquiry, such as things like the FMV footage, et cetera, to get, and clearly the obvious answer would be: yes, at the moment you may not have anything but there are clearly still lines of inquiry to look at and, therefore, the investigation isn't complete. This is not for the SPA to say the investigation is complete; it's just for them to agree or disagree that potentially the current EST to wasn't met at that time.

Q. Okay. Did you really need the SPA to tell you the EST was not met?

A. We didn't need them to but it always a good balance to go and ask your experts, your advisers, as to whether or not they agreed with us.

Q. Let's think about it for a moment. Did you actually have a complainant who had made an allegation in witness statement form of unlawful killing?

A. From the -- from -- from Bang, Saifullah, yes. At that time, we had Mr Saifullah's account that he believed his family had been killed.

Q. That's different. Had he seen anyone killed?

A. He hadn't, no.

Q. No. Did he know how his family members had come to be killed?

A. He didn't, no.

Q. No. He asserted they'd been unlawfully killed but couldn't describe to you the circumstances in which they had come to lose their lives?

A. That's correct.

Q. Okay, did you have any other Afghan witness from that particular DDO that could shed light on what had happened?

A. No.

Q. Had there been any expert examination of the

photographs?

A. No.

Q. Had there been any attempt to reconstruct what might have happened on that particular DDO?

A. No.

Q. Had you managed to speak to all of the people who had taken part on the DDO?

A. Not all of them.

Q. Had you managed to speak to any of the Afghan partner units who might have been present on --

A. Not at that time, No.

Q. Had you managed to speak to any of the support team who might have assisted in any way with that DDO, who might have seen or heard something?

A. Not at that time, no.

Q. So in terms of needing a sense check from the lawyers that you didn't have enough evidence to meet the evidential sufficiency test, again, did it really need you to say to the lawyers "Can you confirm we don't have anything"?

A. You could argue it wasn't required, no.

Q. Because we're now four years on since the allegation was first bought to the attention of the RMP and, again, please correct me if I'm wrong, but would it be unfair to suggest that what you have as the product of that

four years is a statement in video form from Mr Saifullah, some witness accounts from those who were involved in the operation itself, and the paperwork?

A. That's exactly what we had.

Q. And nothing more?

A. Nothing more.

Q. Okay.

SIR CHARLES HADDON-CAVE: Can I ask what a Form 3 is?

A. Form 3, sir, it is a form we send up to the SPA to set out -- we set out what the investigation is. It sets out what evidence we have so far, and then there's a description at the bottom with -- of asking for their advice based on what we have as to whether or not they're in agreement that the EST had been or had not been met.

SIR CHARLES HADDON-CAVE: Thank you.

MR GLASGOW: In terms of the progress that may or may not be made, if we look, please, over the page to 159-13, it wasn't just the lawyers who were going to be made aware of a request in respect of the evidential sufficiency test, Leigh Day were to be informed that it's unlikely to be met.

A. Yes.

Q. So as at June 2018, first you were checking with the lawyers that you didn't have enough but you were also

saying to the firm that represented Mr Bang and Mr Saifullah, "We don't think we're ever going to get enough". That's what "the EST is unlikely to be met" means.

A. Yes.

Q. I mean, is this Northmoor waving the white flag?

A. No, I wouldn't say it was waving the white flag. I think it was an appropriate juncture to inform the complainant thorough their legal representatives that, at that juncture, although there were lines of inquiry still outstanding, we had not found anything tangible to support the allegation.

Q. If we turn, please, to divider 96 and to page 8, the briefing notes in respect of a call to DCGS a few days later. Briefing notes in respect of a call with DCGS due to be held on 14 June 2018, divider 96, page 8, sir?

SIR CHARLES HADDON-CAVE: Got it.

MR GLASGOW: In respect of the second bullet point for Op Tyburn, the allegations of unlawful killing:

> "A number of investigative lines of inquiry to follow; determining proportionality."

Might that be a decision is going to be taken on whether or not it's necessary or appropriate to in conclude those lines of inquiry?

A. I wouldn't know as I didn't write this document.

Q. Is that what you would interpret from -- if you're determining the proportionality of the investigative LoE, whether it's necessary to do them?

A. Well, you could -- actually, yeah, you could interpret it that way.

Q. I mean, inelegantly to suggest whether the juice is worth the squeeze?

A. You could interpret it that way, yes.

Q. "Unlikely that at this stage, based on evidence collected, that we will refer anyone. But ..."

So the DCGS is also being told that, as far as the principle unlawful killing allegation now being investigated by Op Northmoor, it doesn't look like it's going anywhere.

A. Yeah.

Q. Would that be a fair way of interpreting that?

A. Absolutely.

Q. Okay:

"Separately, DSP [Director of Service Prosecutions] in June and then ME and JM ..."

Mark Ellison, John Murphy, so that's Mark Ellison QC, as was, and then Sir Jon Murphy, the IAG, will go in July:

"... to RAF St Mawgan to conduct deep dive and review to determine from policing and legal standpoint

if other lines of inquiry are needed."

Might that suggest that the proportionality of any future lines of inquiry is going to be reviewed by the IAG?

A. Yes, I would suggest it, yes.

Q. So we don't have enough at this stage, we've got some outstanding lines of inquiry, but they may not even be necessary, in which case the answer is "We have nothing"?

A. Yes.

Q. This in June 2018?

A. That's correct.

Q. "Concurrently, greater examination of 2 out of the 10 similar incidents."

That's the scoping exercise. Again, without going over well trodden ground, scoping is simply asking for some documents and reading what you're given?

A. That's correct.

Q. It's nothing more intensive or exacting than that?

A. It isn't, no.

Q. Okay:

"Once any decision made to conclude investigation ..."

I mean, might that suggest that the possibility of the investigation concluding is in the mind of the

briefer?

A. You could argue that. Yes, you could argue that.

Q. "Once any decision made to conclude investigation need to construct narrative and ensure close down is done to protect reputation, including disclosure responsibilities, future of stored material and be prepared for ICC approach. Scale down of Op Northmoor and scale up of DJEP activity."

Now, again, you are not the author of the document but, in terms of investigative or MilSpeak, I'm afraid I've got you in the hot seat for the moment.

A. Okay.

Q. So allow me to ask, and feel free, if you can't answer, to tell me: what might be the narrative that needs to be construct to protect reputation if the investigation is now going to conclude?

A. I would suggest that the narrative would be that all lines of inquiry, a full investigation, a long investigation, had been conducted and that all lines of inquiry had been followed and that there was nothing to support the allegation.

Q. Might that be all lines of inquiry, apart from the outstanding ones that you've identified that might be considered disproportionate to conclude?

A. Of course.

Q. Right. In terms of a concern about disclosure responsibilities and the future of stored material, plainly, what happens to the material you've gathered or what little there is of it, a decision has to be taken how it's kept, where it's kept, and how it is itemised so people know that it's there?

A. Of course.

Q. As to "prepared for an ICC approach", is that the International Criminal Court?

A. It is.

Q. Might the concern be here that, if the investigation is deemed not to have been proper and effective, the ICC might step in and say, "No, we are going to take over this investigation ourselves and we're going to look to see whether the UK, one of our signatories, is guilty of war crimes"?

A. I was absolutely aware that that was a consideration, yes.

Q. Right. So in terms of constructing a narrative to protect one's reputation, might that narrative be intended to defeat any approach by the ICC and for them to take over?

A. You could actually look at it that way, yes.

Q. Because, elsewhere in the documents, it's clear that they, the ICC, were critical of the UK's involvement in

Iraq and that they had concluded there was reasonable information to support the allegation that the UK had committed matter crimes in Iraq?

A. *(The witness nodded)*

Q. Do you recall that?

A. I'm aware if that, yes.

Q. Now, "Scale down of Op Northmoor, scale up of DJEP", is that, as the investigation peter's out, or comes to a conclusion -- to use a less pejorative phrase -- what's then going to have to happen is policy and politics are going to have to step up to answer whatever that narrative might be?

A. That is what it would suggest, yes, and we were -- we passed all our investigations at the end, all the investigation summaries were passed to DJEP for their consideration under the systemic issues.

Q. Since you mention it, the systemic issues, as far as the ten similar incidents of which two were being scoped, at any point did it occur to you, having done that review back in May, actually, looking at them on their own, they might not look as suspicious but when you put them alongside each other, I, as an investigator, find myself thinking that looks odd to me, they're the same language in that one and that one and that one, and it's the same TTP in that one and that one and that one, and they

become more suspicious as a collective body of complaints, rather than on their own?

A. Yes. Consideration was given to that.

Q. Do you feel that as the investigator, you were deprived of the opportunity to explore the collection of complaints and were forced only to scope or look at the individual ones?

A. We were definitely only allowed to look at the three that we looked at.

Q. You obviously were having -- wanting to look at more of them --

A. From the very outset.

Q. All of them?

A. All of them.

Q. Four of them but, in the end, only two of them?

A. Correct.

Q. Plus Tyburn making the three?

A. Of course.

Q. Okay. Then whether or not there may be an end in sight for Northmoor, based on what we've seen in the earlier document, if we look to the very bottom under the policy section with Peter Ryan role in Gold Group, are you able to help with what Peter Ryan's role in the Gold Group was?

A. I can't.

Q. Okay, thank you:

"In light of interest in Statute of Limitations for legacy investigations understanding in Centre that Op Northmoor ... conclude investigation by end of '18."

But if that briefing is interpreted in the way that it seems to be from the way it's written, is someone suggesting that Northmoor needs to end by the end of that year.

A. The way that is written, you could argue that as the way it could be interpreted, yes.

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

A. I don't think it would be, no.

Q. If you had been told that the expectation, either being given to DCGS or accepted by DCGS, was that Northmoor would stop by the end of 2018, would you have been happy with that suggestion?

A. No, because, as I've said before, there was still outstanding lines of inquiry and we were still pushing for the other two operations to be looked at. So again, trying to put a timeline on something as enormous as this was, again, just silly.

Q. You still, of course, had that the benefit of the assistance of the IRT, so whilst it may seem that some had an end in sight, the IRT was still able to help. Can I take you back to file 1 and to divider 34 and I'd

like you to look at the assurance document of the IRT in August 2018, so about six weeks or so after that briefing to DCGS took place.

I'm not going to go through its entire contents. Again, as before, if anyone wants me to deal with a section, please let me know. But to use that word that's often quoted in the Northmoor documents, I'm going to try to be expeditious or expedient in the way I approach matters. If we look to page 34-4, Major, the photographs in respect of Objective 2 and Objective 1 -- and to remind you that we saw a very poor quality photograph yesterday afternoon, what was called the stab shot of the room in which nine people had been shot dead. You had had the opportunity to see the slightly better quality individual shots of the -- of those to who had lost their lives, who appeared, as you accepted, to be laying, at least many of them, on what looked like bedding, and to have sustained head shots.

A. Yes.

Q. To remind you that those are Objectives 2 and 1, Objective 1, from recollection, eight EKIA and three weapons; and Objective 2, nine EKIA, I think and four weapons, but I may have my maths wrong and, if I do, I apologise. But you had understood, you told us, the potential importance of those photographs to your

untrained eye?

A. Correct.

Q. You wanted them to be reviewed and you'd identified that as obvious in May 2017?

A. Yes.

Q. We're now August of the following year and what is written here is:

"The photographs in both objectives 2 and 1 at the present time remain a concern. There is no associated continuity with regards to whom, when and where they were taken. Consequently, they are considered by the IRT not to be viable evidence at present."

Did you agree with that conclusion?

A. No, we didn't.

Q. The photographs that you had, had been provided to you by UKSF as linked to those DDOs?

A. Correct.

Q. Indeed, they were part of the post-operational staff work where they were attached to the write-ups in order to demonstrate visually what might have happened during the course of the operations?

A. Correct.

Q. So to your mind, whether it was taken by one individual or another, were you happy that, because SF that given them to you in connection with those DDOs, they must be

the photographs for those DDOs?

A. Yes, on the face of it but what we also did is we actually have the guys who were -- who did the research on this who -- the specialist gurus, for want of a better word, guys who understood metadata. They looked into the metadata of all these photographs and actually got the date, time and place when the photographs were taken, which corresponded with the -- what was in the photographs, the names and the date, time, place, which was on the photographs. So we had been able to prove or establish, rather -- we were able to establish actually the date, time and place.

So the where and the when were established but what we couldn't do was the who. So we were still confident that, actually, well, yes, okay, the who we still need to speak to and find out whether these photographs were taken at a certain time before or after weapons may have been moved, for instance, or made safe, for instance. But the fact remained that we had the right photographs with the right date and the right time and, therefore, there was nothing to suggest they weren't the right photographs and therefore, as far as we were concerned, and certainly I was concerned, we should have been able to push forward and have them examined. That was not the view of the IRT, they remain adamant that without

the "whom" there was no point in getting them looked at and they presented, as I say, no evidential value.

And again, because these were -- recommendations were accepted throughout the chain of command, when we did push back and say, well, we've got the where and the when but not the whom, can we at least go forward? The answer was "No, because you don't have the whom" and the advice from the IRT is without the whom you can't go forward with it, that's been accepted by your senior commander, your Chief Officer, so get on with it, you're not getting the photographs examined.

Q. In any sense did that leave you feeling like you were banging your head against a brick wall?

A. Very much so.

Q. Because, again, just to point out the very clear advice that was provided by the IRT, that's set out on page 34-6 at paragraph 2.7.

"The IRT take the view that the photographs relative to Ops 2 and 1 should not be subject to expert opinion until the continuity has been established (ie who took the photographs, where and when)."

Now, when you talk about continuity, was your understanding that they actually wanted a statement from someone to say, "On this date, at this time, in this location, I took the following photographs which

I exhibit as my exhibit AB1", for example.

A. That's exactly my understanding of what they wanted.

Q. Given the challenge that you had in engaging with Special Forces, did you think you were ever going to be likely to be able to get a statement from someone to say, "These are the photographs I or even we took on this DDO"?

A. We were hopeful because some of the operational staff were indicated who may have been the sightseeing exploitation individual and, therefore, may have taken the photographs. And, therefore, because we were able to identify those, we were able to go and speak to them and say, "Do you recall taking photographs?" Unfortunately, the -- they became negative results in terms of they could not recall it and, therefore, we're back to square one again. So once we had that, it became quite clear to me that actually, without being able to establish someone saying, "Yes, I took the photograph, I'll give you a statement", we were never going to be able to get the photographs looked at, which, for me again, was very frustrating because you've got three bits to get, which is the whom, the where and the when. We've established the where and the when, surely, as far as I was concerned, that was enough to at least have somebody have a look at them, as a crucial

piece of potential evidence.

Q. Insofar as additional inquiries that you might be able to make above and beyond the photographs and having them looked at by an expert, if we just go back to page 34-5 for a moment and to paragraph 2.5(f), having, they'd suggested, interviewed N1201 and N1799 about their participation in Operation Tyburn, it would be prudent and proportionate to invite SF participants in both objectives 1 and 2 for interview under caution.

Was that a different approach to the one that the IRT had been advocating thus far?

A. It would appear so, yes.

Q. I mean, they'd wanted duty statements or reports to be taken.

A. Yeah.

Q. Do you understand what it was that had caused them to change their mind and not simply say, okay, Section 9 statements or AB(?) interviews, actually, these are interviews after caution?

A. I don't understand why they -- or I can't recall or understand why they'd have changed their position to interviews after caution. We did have long discussions with them and putting our point across about what we wanted to do with the individuals on 1 and 2 and, as you -- as mentioned in the previous policies, if we'd

identified the triggermen, we would have considered interview after caution for them. But, considering the IRT from the first outset said, "Well, just do a scoping exercise", you could argue that's quite a change in their opinion to go from just do scoping to now interview after caution, which again, was much further than we wanted to go because we wanted to actually speak to the people to start with as witnesses, until we'd identified -- you can't accuse them all, to start with.

As far as we are concerned they are all witnesses until we identify who potentially the triggermen were and then we could up the status if required and therefore the way we conducted interviews with them, based on what information, what evidence, we had.

Going straight in with interview after caution for everybody, when there were other ways of collecting evidence from witnesses, was what we wanted to do, which was the correct way and, as far as I was concerned, the way to do it.

Q. It seems their advice is to go almost from 0 to 100 rather quickly because you've --

A. That would be the way it's written.

Q. -- gone from scoping not investigating, to now interviewing after caution?

A. Mm-hm.

Q. And that's an interview after caution without having had an investigation prior to it?

A. That must be the way it is written, yes.

Q. Did you find it difficult to understand the logic of the advice you were being given?

A. Yes.

Q. It would seem that PM(A) didn't have the same difficulty in accepting their recommendations or understanding them. If we go back to divider 2, please, and -- sorry, back to file 2, please, and divider 99.

Sorry, divider 98. I do apologise.

On 9 August, in respect of Objectives 1 and 2, you'd identified that:

"We will now expedite all lines of inquiry whilst preparing investigative actions in relation to Objectives 1 and 2."

Does this -- or do we understand that this now records that you are no longer scoping but are now investigating.

A. That is correct.

Q. When you set out that you were going to expedite all lines of inquiry, is that supposed to be interpreted that you're going to deal with them as quickly as you can?

A. Yes.

Q. You're sort of going to push them up the pecking order?
A. *(No audible answer)*.
Q. What's the need to expedite the lines of inquiry for something you've been looking at now for years?
A. Because we needed to get to the bottom of the investigation.
Q. Was that because you were of the opinion that you -- or at least others were of the opinion the investigation was going to end by the end of that year?
A. I think for us, more about the fact that actually, we now had -- we'd now already been overt, rather than covert, for a long time, a year and a half, and there were still lines of inquiry that we needed to get on with, whether it was pursuing the FMV and finally bottoming out from somebody as to whether or not it even existed, for instance getting a -- we never found anything. But we never had anyone to say it didn't exist, although they said it might not have existed or, for instance, the SIR for Tyburn.

So to bottom out those lines of inquiry to say well does it or doesn't it, we needed somebody within an organisation to come forward and say, "I'll write a statement to say we've done a search and conclude that document you're looking for or that piece of evidence you're looking for doesn't exist".

So those are the lines of inquiry when we're saying okay, they're set out they're there, they've been going backwards and forwards for some time, we need to get on and get them completed.

Q. PM(A), as we can see under the "Reason" has been briefed on the IRT report and has verbally accepted the recommendations held within it.

Insofar as there is now going to be sequencing to the outstanding actions, what is the sequencing that needs to take place? Is that a matter for you to determine as the investigative team?

A. It was.

Q. If we look over the page to divider 99, please, and to 99-2. Insofar as sequencing was an issue, do we see here that, for example, 1466 and 1788 had been re-interviewed -- sorry, once they'd been re-interviewed, engagement will be requested with DSF to explain where we currently sit in the investigation and where we're going next?

A. So it's the sequence, when we talk about the sequencing of this, it was again -- whilst it was agreed that we were going to launch investigations into 1 and 2, it was also stated that, before we could do that, DSF was going to be briefed by PM (Army)'s office that this was going to be happen. As far as they were concerned, we were,

from my understanding of the briefings that DSF was given, was that we were only investigating Tyburn and that there were other incidents that were being scoped but nothing more.

This was now raising the ante to actually, this isn't just Tyburn that we're investigating. We're now going to launch two more investigations. So the decision was taken at a senior level that, before we actually started speaking to these people, we'd go and brief DSF to tell him that me were going to go and do -- launch another two investigations.

Q. We see, don't we, under the reason:

"DSF need to be made aware of the intention to investigate these Ops before action is taken. Therefore, the sequencing and engagement by Assistant Head Northmoor is crucial."

So the position is that you have to expedite the lines of inquiry but before you can actually take a step outside the door, you've got to wait for someone to brief DSF.

A. Yes.

Q. It wasn't just DSF that needed to be briefed. Let's look on to divider 100, and 100-2, please. In addition to briefing DSF, the SPA have to be briefed:

"SPA OOT are to be briefed prior to any future

action on Objective 1 and 2. This includes speaking with 1799 and 1201."

So are there a number of steps that you and your team are being told you have to go through before you can take the investigative action you think is necessary to take?

A. Very much so. I mean the engagement of the OOT was less of a delay because actually that's kind of my decision to go, well, I've got my Service Prosecution Authority adviser there. He knew about what we were doing anyway but to actually have that engagement from the outset, to say, okay, just that you're aware we're upping the ante on this and this is what we're going to do, was very, very -- pretty much a very short brief. We're not talking long delays, not talking PowerPoint presentations or waiting, and waiting, and waiting, and waiting. This was, okay, quite rightly so, from the very outset, let's get SPA involved in what we're going to do, a very quick short brief to them and then we can crack on.

The other, more high-level individuals being spoken to, that's the bits that took more time because we had to stop, wait for those to be briefed, then be told, okay, they have been briefed or actually a meeting to be set up to start with. Then the brief to occur, then us

to be told, okay, now they're going to brief, you can now start engaging with the unit to move forward with your investigation, which took time.

Q. The recommendation that had been made by the IRT was that those involved in objectives 1 and 2 should be interviewed after caution, the IAC reference.

If we look to divider 104, page 2, within four months, rather than interviewing after caution:

"All personnel will be treated as witnesses at this time."

A. Yes.

Q. So you've gone from "You can scope", to now "Forget scoping, you can interview after caution", to now "Oh you can't interview after caution, you can only treat as witnesses".

A. No, this is the -- back down to my decision as to, actually, we're not going to do these interviews after caution. This is now me saying, no, I disagree with the IRT interviewing after caution. This is, having consulted with our legal representative, that it wasn't appropriate to do interviews after caution, treat them as witnesses, we may get more information if they're not hostile in the first place because, as for aware, we have some photographs which are untested, we have no actual suspects of a -- of an illegal action taking

place. We have our own suspicions that something has happened and, therefore, until we established who was where doing what, you can't then start accusing people of things. So, as far as I was concerned treat everyone as a witness to start with, and that was obviously, as I say, bringing in the likes of the SPA as advice as to what my thoughts were, was the right decision. And therefore, you are going in at the right level with the right way to retrieve or recover evidence.

Q. Major, unless I misrecollect what you told us before lunch, you told us that you regarded the individuals, particularly the shooters on those operations, as being suspects?

A. Yes, potential suspects, yes.

Q. Well, you wouldn't be speaking to them as witnesses then, would you?

A. Well, we hadn't identified who they were. So at the time, we didn't know who the shooters were, so -- who the triggermen were and, therefore --

Q. With respect, I think you're about to find out that answer is wrong. Let's turn on to divider 105, page 2:

"The 3 shooters identified so far as SIGWITs."

That's witnesses. So you had identified the shooters, they weren't suspects, they were witnesses. So what is it, please, Major?

A. We clearly identified them as witnesses, significant witnesses, rather than suspects. I'd clearly changed my decision at that time.

Q. If there's any doubt about that, over to divider 106, page 2:

"No suspect status will be designated at this time."

In any way do you think that you might have lacked the necessary experience to reach the conclusions that were appropriate about witness versus suspect, arrest or don't arrest, scope or investigate?

A. As I've mentioned before, I think I would have in hindsight benefited from having an adviser with suitably a lot more experience than me, to give me that policing advice, certainly.

Q. If we look on in the file that we have to tab 108, please, and to the other DDOs that were either not being scoped or not being investigated. We see here that:

"Previous policies relate to Objective Tyburn, Objective 2 and Objective 1 ... The other remaining 8 DDOs from the TTP review are low priority."

What does that mean, please?

A. Um ...

Q. Does that mean they're not being looked at?

A. They weren't elevated to investigative status --

Q. They weren't elevated even to scoped, were they?

A. They were -- all the documentation we had access to was recovered in terms of the SIRs, et cetera. So that was the scoping piece. But, after that, any further actions with the other eight were purposely on the low priority to focus on objectives 1 and 2.

Q. Is that because there was a rush to try to conclude as much as you could or to expedite everything before the end of 2018?

A. It was -- it is to focus on objectives 1 and 2 which we're allowed to investigate.

Q. So it would be wrong for anyone to conclude that because the close down was being spoken of and because the end of 2018 had been identified as a potential concluding date, that you and your team were in a rush to do all you could in the remaining months or weeks?

A. I think that would be wrong to say that, yes.

Q. Okay. How about divider 111, please, sir.

This deals with additional materials that have been provided and needed to be the subject of searching.

"The decision was taken [in October] that following initial review there was a lot of bookmarked material that was NOT [as you emphasised] relevant. Whilst the review will continue, I will direct new search teams ..."

I think perhaps you mean "new search terms".

A. I did.

Q. "... in order to expedite and refocus the investigation."

Were you expediting the search of the DAS material in early November because you anticipated that, by the end of the year, there was a ministerial submission that might announce the possible end of Northmoor?

A. No.

Q. Back for a moment, please, to file 1, which is another of your notebooks behind divider 39, sir, and if we look, please, within that to 39, page 6, and I apologise it's difficult to see because the numbering is obliterated by the right-hand page but you'll find it with the date at the top of 12 September 2018. Do you have that, Major?

A. Yes.

Q. "Gold visit. Gold meeting", and then what is set out there in your handwriting:

"Expediency is key."

Why is expediency now key?

A. From my recollection, now we have been given the authority to investigate 1 and 2, the feeling was that, clearly, we were not going to be spending another four years going over the same thing. We'd already -- we knew the individuals involved. We knew where they were

and how to get hold of them and, therefore, because we weren't doing anything covert and we had already done all the scoping and had the information, there was no reason why we should have to spend three years trying to get to the same state we were with Op Tyburn when we already had who they were, where they were and we had all the storyboards, et cetera. We weren't continuing to scope or find information. Yes, there were continuing searches going on for additional lines of inquiry, but we had the basic information which we could therefore go and interview these individuals and ask them did they remember this and what happened? There was no reason to drag our heels and therefore expediency would quite rightly get on with it.

Q. In any sense, were you needing to get on with it because there was a possible close-down date in mind?

A. As far as I was concerned, no.

Q. In the same file you have on to divider 40, please, and to page 40-2. This takes us into March 2019, which is three months on from the possible anticipated close-down date. The reason I want to ask you about this entry is this: look to the typed entry and can I explain, that entry is typed because it's possible to read irrelevant material behind it in the photocopy.

I'm so sorry, divider 40, page 2.

A. Yes.

Q. The typed entry at the bottom that reads "IRT"; do you see that, sir?

A. Yes.

Q. Let me explain. Your handwriting is beneath the bit that has been whited out or blanked over, and what has been typed up is your handwriting but the reason it's been done is because it's possible to read in the photocopy other material on the other side of the page which isn't necessary. So what's happened is, this typescript has been applied to replicate your handwriting. Does that help?

A. Yes, yeah.

Q. Okay.

"IRT review with a view to PM(A)."

Now, in March 2019, was it known that the PM(A) was going to be leaving post relatively soon?

A. Yes.

Q. In any way, was there pressure on either the IRT or on Northmoor to expedite the investigation so that the close down happened before the PM(A) left office?

A. I am aware of conversations that suggested that PM(A) wanted to have the close before he left the post and, therefore, there was a constant "Where are we? How are we getting on with this? Is there enough to continue?"

That's when it sort of -- from then on is when it became clear that it would have been probably nice, shall we say, for Operation Northmoor to be concluded by the time the Provost Marshal finished. That was my feeling.

Q. I mean, if "nice" is the right way of describing it, it might be, perhaps, a feather in his cap at the end of his tenure in post that the largest police investigation conducted by the RMP had been closed down by him and by "closed down", I mean concluded, in his eyes.

A. You could argue that, yes.

Q. Well, would I be unfair if I were to invite anyone to reach that conclusion?

A. I don't think you would, no.

Q. Right. In any way, might the PM(A) have lost sight of the most important thing, which was the end state, rather than the exit strategy?

A. I would agree.

Q. You as an investigator, one would hope, had the end state in mind, not the exit strategy?

A. Yes.

Q. Were you able to influence the outcome, as it were, being either end state or exit strategy, or were you in a position --

A. No, I wasn't.

Q. Right. It's always very difficult to judge one's own

ability to influence and, if this is an unfair question, you must tell me but did you find that you were unable to influence the end date versus exit strategy because you were either too junior, not experienced enough, lacked the confidence to speak up or were just not given the opportunity?

A. Just not given the opportunity, to be fair. As far as I was concerned, the investigation moved as quickly as it could within, as I say, the constraints we had, but there was always more lines of inquiry that we could have looked at and, as I say, towards the end of the -- towards the end, I suppose, of Operation Northmoor, as I'm sure you're aware, there were other incidents that came to my attention which my belief should have and could have been continued with Operation Northmoor with the right personnel, in the right location, as it were. But the decision had already been made that once Tyburn 1 and 2 had been concluded, that would more or less be the end.

So I recall being told that when I put up my protestations to say, well, you know, there are potentially other things and we can't rush this, the response I got from individuals was, be careful, because you're just being seen as "It's Cox who wants to stay down in Newquay".

That was it. That was the view that was held at the top about what I was doing down there, not about Cox is doing a good job but Cox just wants to stay in Newquay and that was definitely not the case. As I said, I tried to pick -- tried to open up all eight, I was not allowed; tried to get four, was not allowed; two, I could do.

Well, if I'd been able to establish a positive -- a positive outcome? An outcome for 1 and 2 which, therefore required further examination of the other eight, we may well still be there now.

Q. I mean, was a windowless facility in Newquay really that attractive an option?

A. No.

Q. In any way, were you left with the sense that not only had things stopped too soon but you hadn't finished the job?

A. We had not. We had not.

Q. Had you scratched the surface?

A. Potentially. Potentially not. Potentially not. We were bound by the terms of reference, and the terms of reference gave us the -- basically the 11 DDOs. Having conducted searches myself under agreements with the units, that in certain circumstances for certain search terms I would personally go and do the search myself,

I did come across other incidents, shall we say, which raised eyebrows. Nothing more than concern, nothing more than that maybe needed some more -- to be looked at, to be scoped, for want of a better word. But they did not sit within the terms of reference and, therefore, all I could do was say, well, sirs, whilst we're looking at this, potentially we could maybe have to look at other areas. And the response was "You stick to the terms of reference you have for the time being. Bottom those out, investigate those first and then we will decide what further action is required".

Q. Again, so we understand, the terms of reference actually were restricted down to two scoping and one investigation?

A. Yes.

Q. Albeit that the two scoping sort of became an investigation when you were going to interview after caution but didn't interview after caution, wanted to speak to people but DSF had to be spoken to before that could happen?

A. That is correct.

Q. Just before we break for a break this afternoon, can I ask you this and it may be that you're not able to help, but you spoke about conversations you were aware of in which it had been said that the PM(A) was anxious

to see this particular investigation signed off or concluded. I won't use the phrase "closed down" but signed off, completed, concluded, before he departed. Were you present for those conversations or did other people tell you about what the PM(A) had said?

A. One of those conversations I was present for, back in Andover: that long ago. So prior to me joining Operation Northmoor, I was present in a conversation where the then not Brigadier Neal, Colonel Neal, said, "When I am PM, I will close Operation Northmoor down".

Q. Now, this is a conversation that occurred when you were 2IC?

A. No, when I was the Executive Officer --

Q. I'm sorry?

A. -- at Provost Marshal (Army).

Q. Right. At that point, Colonel, as he then was, Neal, had not yet either assumed the rank of Brigadier or assumed the position of PM(A)?

A. No.

Q. And his expression of closing down Northmoor when he became PM(A), was that made at a time when he anticipated or knew he was going to become PM(A), or was that simply an aspiration on his part?

A. I knew it was when he was going to become PM(A), because that decision had already been made. I knew nothing,

really, about Northmoor at the time. But I just remember, when I took over Northmoor, that that conversation, I was party to that comment all those years ago. So when we came to the close down, and it was on 15 July 2019, when the guys were flying back, that I was told "What have you got? We've briefing ministers midweek that this will be closed", then you hark back in your head to, well, there was an aspiration to close -- if he finishes on Friday and he's achieved what he said he was going to do four years prior, that "I will close this down when I'm PM during my tenure."

Q. Did that leave a bitter taste in the mouth?

A. It raised a sort of, well, he's achieved what he wanted to do. Great. That's fantastic for him. That is at the expense of an investigation, expense of justice, potentially -- potentially -- for the victims and the victims' families, as far as I was concerned.

Q. And if exonerated, justice for those who had been accused of very serious crimes?

A. Precisely.

MR GLASGOW: That would be a convenient moment for this afternoon, sir. For the break, not for the conclusion, before anyone misunderstands.

THE WITNESS: Exit strategy.

MR GLASGOW: I'm hoping for an end state before 4.30, sir.

If not, there will be an exit strategy at 29 minutes past.

SIR CHARLES HADDON-CAVE: I hear you, Mr Glasgow. Thank you very much.

We'll break now, please, until 3.25.

MR GLASGOW: Thank you, sir.

SIR CHARLES HADDON-CAVE: All right, thank you.

(3.07 pm)

(A short break)

(3.24 pm)

SIR CHARLES HADDON-CAVE: Mr Glasgow.

MR GLASGOW: Thank you, sir.

Major, I had myself checked and I wanted to, but can I just ask you this: the evidence you have given in respect of the conversation you had with then Colonel Neal, ultimately Brigadier Neal, it doesn't appear in either of your two witness statements.

A. No.

Q. Can I ask you this: is there a reason why it doesn't appear within them?

A. Other than the fact that it's literally just come back to me.

Q. Now that it has just come back to you, do you remember if this is a conversation that happened once or more than once?

A. Just once.

Q. Can you remember who else was present when it took place?

A. Apart from Brigadier then Warren, no.

Q. Thank you very much indeed. Now, to try to pick up again on the chronology, because you'd identified that there were inquiries ongoing, some of which you had wanted completed, which you were able to have completed, can we just have your help with the next IRT review which is in our file 2, divider 124, and it starts on page 3.

The reason for taking you to this is that this review took place on 8 April and, to help you with the chronology of ongoing inquiries, in March of that year, members of Northmoor had been deployed to Afghanistan to take accounts from people in theatre, including members of the APU, and you may also recall that one of the individuals spoken to, N7054, alleged in his interview that he had seen an elderly unarmed man shot by a member of Special Forces?

A. Yes.

Q. It had not been possible to date that allegation, therefore not possible to link it to one of either the three DDOs you were investigating or the eight that you might have scoped or would possibly scope in due course.

But when you referred to matters that you had wanted investigated but lines of inquiry not chased down, is that the sort of thing you had in mind?

A. Yes, but that allegation we did actually identify the operation, if I recall correctly.

Q. Is that -- became known as PPP? We'll see if we can get there in due course with the paperwork.

A. Yes, yeah.

Q. I'll see what I can do to help.

We see from the arrival of Northmoor in April that -- sorry, I apologise.

We see from the arrival of the IRT to Operation Northmoor in April that they identify that there are efforts ongoing to locate the APU. We can see reference to that in, for example, their paragraph 2.1.

A. Yes.

Q. A decision has been taken to send troops to theatre as of Sunday, 7 April. The various members of the APU have been identified who are still serving:

"... efforts to interview and obtain statements from these individuals is currently ongoing."

So an extant line of inquiry. Is that an important line of inquiry as you regarded it?

A. It was incredibly important because they would have been able to potentially provide eyewitness accounts if

they'd been on the ground at the relevant time, as to what actually happened.

Q. As to another line of inquiry, which we've already dealt with but I do want to deal with it again, and I will try not to go over old ground, page 124-4 paragraph 5.1:

"Despite extensive enquiries and multiple interviews of [those individuals] that attended the scenes of objectives 1 and 2, it has not been possible to establish the necessary continuity in relation to the photographs from each scene."

Can I ask you this, when you spoke to people who had either been present at or had given assistance to the DDOs, were you seeking to establish the continuity of the photographs or did you want to know what they'd seen and heard?

A. Both. So (a) what they'd actually seen and heard as witnesses but (b) because one of the criteria of the whom, the when and the where was still outstanding as to -- for the continuity of the photographs. So if we could establish the whom of those photographs then we could get the IRT to agree that the right course of action would be to have them forensically examined. Therefore, they would have advised, recommended up the chain, that we'd then done the whom, the where and the when and, potentially, we could have got authority to do

the forensic examination.

Q. It may be that we get a sense of your frustration from the way the IRT wrote up a further section of their assurance document, over the page, 124-5 at paragraph 10.1.

"As previously stated continuity of the photographs has not been established. The IRT are aware that some members of the Northmoor investigation team believe that there would be merit by tasking an 'expert' to examine and provide an opinion on the photographs of each scene. The IRT believe that such a tasking would prove to be futile, expensive and provide no additional benefit to the enquiry, in that:

"No probative value or context can established by opinion alone."

Did you agree?

A. No.

Q. "There is simply no evidence or intelligence to append such an opinion to."

Did you agree?

A. No.

Q. "Nothing of value would emerge that would assist the reconstruction of each scene."

Did you agree with that?

A. No.

Q. When it refers to some members of the Northmoor investigation team, presumably you were at least one of the members of that group?

A. Absolutely.

Q. Was anyone else in the Northmoor team of the same opinion that you held?

A. My DSIO, and several members of the investigation team, Team 1.

Q. When it came to discussions with the IRT about your collective desire to have expert or experts look at these photographs, did you voice the views of everyone, or did everyone get a chance to contribute?

A. Myself and the DSIO were the ones who spoke with the IRT.

Q. To ask again, was it like banging your head against a brick wall?

A. Yes.

Q. Did occur to you that you ought to take this to Gold or the PM(A), for example?

A. The IRT were acting on behalf of -- acting on behalf -- the Independent Review Team who would report up to Gold and further up to the PM(A). As you've seen from the other IRT reports, that clearly whatever they said -- and as you've already pointed out, the repetition just lists document alone of "No, don't do the photographs;

no, don't do the photographs." It would have been futile of us to continue to go, "Well, we still need to *(unclear)* the IRT, can we still do this?" Because we knew what the answer was going to be, which is: it's already been recommended twice, you've not achieved what the IRT has said, and therefore the answer is still going to be no.

So that conversation was basically, in my eyes, futile.

Q. In terms of the conclusion that was reached by the IRT if we look on to page 124-6 and to paragraph 13, once again you get a gold star.

"The IRT continue to be impressed with the positive, tenacious and professional ongoing approach by the SIO and his investigation team."

It might have needed to include "except where the photographs are concerned".

"They continue to be open and realistic about the investigation, and always adopt a thorough and comprehensive approach to all arising tasks."

The platitudes are very nice to hear but the next sentence I'd like to ask you about and it maybe that makes for less comfortable reading:

"The IRT are of the opinion that Operation Northmoor should now consider all aspects in connection with

a suitable exit strategy. The IRT believe that the enquiries and extensive work carried out to date has been robust, thorough and will be able to stand scrutiny from any third party."

Let's deal with the first conclusion that they offer there: how did you feel about considering a suitable exit strategy when you hadn't yet got to the end state?

A. Exactly that. We hadn't got to the end state. We still hadn't spoken to everyone we wanted to speak to. There were still APU, et cetera, that were required to speak to. So yes, an exit strategy is always something you need to consider, not from the very outset and admittedly it has been going on for quite a while and therefore consideration should have been given to it, yes. But not to say, well, actually, if you read between the lines, "Operation Northmoor is over, get out", is basically what my interpretation of those last comments are.

Q. In terms of the confidence that they appear to have that your extensive work has been robust, thorough and will be able to withstand scrutiny from a third party, do you share their confidence?

A. Very nice comments, is all I'd say. It's very, very nice of them to say that but, actually, clearly, as we've seen, it has not been the case.

Q. In terms of what message that advice sent to you and your team, did it spell out in rather large letters "The end is nigh"?

A. Yes.

Q. What impact did that have on you and others working for you when you still had significant lines of inquiry to work on?

A. As far as I was concerned, as far as the team was concerned -- I can't think of a way to phrase it -- double efforts, as it were, to see what we could actually achieve before the end is nigh came. So, whilst we had no date for it, we knew it was definitely going to be part of consideration by PM (Army) *et al*, once the recommendation had gone up and, therefore, in order to see if we could put out any further lines of inquiry before the end date was given to us, as it were, I think me and the team felt that we just needed to work harder, longer, quicker, faster, see what we could find, if anything, to bottom out as many lines of inquiry and actually find evidence of a positive or negative nature to prove or disprove what we believed.

Q. Well, that report was signed off on 12 April. If we look to divider 125 and page 2, please, four days later the team who had deployed Afghanistan were recovered to the UK without conducting further interviews.

Is that a decision that you had wanted taken?

A. It -- many of the -- of the -- the team being recovered back to the UK, a lot of it was out of our control, in terms of we only had a certain amount of window to be in Afghanistan for health -- not health and safety, for security reasons. So we were allowed to deploy to Afghanistan, absolutely fine, but there was always a caveat on how long we could be out there for because of the security situation itself and being able to -- for the other units that we were working with and supporting us, to be able to support us and keep them secure.

So whilst they would go out, and go out for two weeks, you couldn't just send the guys out indefinitely and say, "Sit out there until such time as someone comes forward". We had to be bound by timings, so you had two weeks to go out there, get as many interviews as you can and, unless there is a reason to extend that, then you have to come back in that time. So those sort of measures were out of our control completely.

Q. So would it be unfair to draw any link or any temporal link between the decision to recover the team on 16 April and the advice that you needed to think of an exit strategy four days before?

A. Yeah, it would be. Yeah.

Q. Okay. Let's look on to tab 130, please, and to something that perhaps was still within your gift, if you were able to pursue it.

16 May, so just over a month later:

"No duty statements for the other 8 DDOs will be recorded."

Does that mean that scoping has entirely stopped for the other eight DDOs?

A. Yes.

Q. Presumably something that you did not want to happen?

A. Well, we'd have done as much scoping as we possibly could without actually speaking to anybody. So having recovered the OSW, the INSUMs, et cetera, in the photographs, and viewed them, there was nothing more that we could do. Duty statements were not something we would be taking off anybody.

Q. How about divider 128, please, going back into late April, 26 April. 128, page 2:

"... the interviews of 1802 and 1786 will not take place until objectives 1 and 2 are complete."

A. Yes.

Q. Well, at that stage, you knew that what was being looked at was an exit strategy, so did you anticipate they were never going to be interviewed about command responsibility?

A. No, as far as I was concerned, they were going to. In my investigation strategy, yes, they needed to be spoken to and the advice was they wouldn't be spoken to until the end, which was fine because, actually, if we'd established a -- if we had established a crime had been committed and we'd known about it, then it would have been command responsibility. If they hadn't -- no crime had been established, as far as I was concerned they still needed to be spoken to as far as outstanding lines of inquiry to conclude and follow every breadcrumb because, actually, they hadn't been spoken to to ask about what they knew. So, therefore, it was absolutely appropriate that you have two individuals, who they were and where they sat at the time, that needed to be spoken to.

Q. That, of course, was your view that they needed to be spoken to.

A. Yes.

Q. Was there a sense that you might not be given that opportunity?

A. I think the -- it was more that they would not be spoken to in the anyway that I wanted them to be spoken to, in terms of we weren't going to be allowed to do, as we had done with every other witness, sit down and take a Section 9 witness statement off them to see what they

knew, a signed statement. I was told that they would -- we were -- when and if we got to speak to them, unless a crime had been committed, we would be speaking to them -- a gentleman's chat was as it was described. And this was something I was not prepared to do and I think I -- policy later on that I was not going to speak to them.

Q. We will come to the document which identifies the gentleman's chat and I want to ask you about that particular observation and why you consider it may have been made or whether it was or was not appropriate.

In terms of possible progress for Northmoor as an investigation at this time, what I'd like to have your help with, please, is divider 136 and to page 3, which is an email sent from Assistant Head Northmoor, Colonel Morris, to Gold John Harvey on 20 May:

"John,

"To confirm our [discussion] with PM(A) this afternoon. You will now socialise in person the following three options with [Sir Jon Murphy, Mark Ellison Queen's Counsel and the Director of Service Prosecutions], (the latter probably through Stephen Kell) over the next few weeks ahead of the Gold Group on 14 June:

"Option 1. Suspend Op Northmoor."

Presumably that's the last thing you wanted to happen at this stage?

A. Correct.

Q. Then, what is set out there is that it's identified that there are lines of inquiry continuing under the SIB regiment, in particular, the APU line of inquiry, which you wanted bottomed out?

A. Yes.

Q. Did you regarded that as an important line of inquiry?

A. An essential line of inquiry.

Q. Right. As to the advantage of suspending Operation Northmoor: the drawdown of personnel and material can take place; it allows lines of inquiry to be followed without time constraints.

If you suspend Operation Northmoor, how are the lines of inquiry going to continue?

A. Who's going to do them?

Q. Once you suspend it, no one is doing it, are they?

A. No.

Q. Okay. There are apparently disadvantages. The narrative might be Operation Northmoor hasn't concluded. I mean, that's not the narrative, that would be the very fair observation, wouldn't it? If you suspend it, it hasn't concluded.

"Isn't quite SPIS ..."

Service prosecution investigation summary, is that?

A. Service police investigation summary.

Q. Service police investigation summary. In other words, it isn't quite up to standard if you suspend it?

A. *(The witness nodded)*

Q. Is that a fairway of looking at it?

A. It's not concluded. It's not concluded correctly.

Q. Right.

"PM(A) could be accused of 'running for the door'."

Well, he had to get out of there by July, didn't he?

A. *(The witness nodded)*

Q. So he had a couple of weeks to get to the door and turn the handle.

"Option 2. Discontinue Northmoor at the Gold Group. This will require a 'watertight' rationale as to why the APU line of inquiry is not now being followed."

Could you conceive of a watertight rationale for not following what you've just described as an essential line of inquiry.

A. Absolutely not. I recall, in one of the few meetings I had -- I was with in with Mark Ellison QC at the time, that he was -- when asked his opinion, these lines of inquiry, where do we go with them, his opinion was: you well everything, you don't stop and, until such time as you've spoken to every single person, you just don't

stop and people like the APU were absolutely essential to speak to. It was very reassuring to have the QC, at the time, saying, no, you just get on with it. You keep going. Keep going, keep going, keep going.

Q. One of the particular pieces of advice you noted down in your workbooks from him was, "Be confident in applying suspect status to individuals. If you've got a reasonable suspicion, you should make them a suspect".

A. Yes.

Q. Is that the sort of advice you took to heart when it came to how you should approach the investigation?

A. Yes, I think so.

Q. Did you feel the same sort of advice was being shared in approach by the IRT?

A. No, I think, we just had a very different take on their view of Operation Northmoor and how the investigation was running.

Q. In terms of option 2 and discontinue, the advantage is:

"Op Northmoor is over!"

That may be a shocked exclamation mark, it may be a celebratory exclamation mark, but at least it's over one way or the other.

"Disadvantage: Persuading the IAG not to follow a reasonable and proportionate line of inquiry to its conclusion."

Now that's what the IRT: that is persuading Sir Jon Murphy and Mark Ellison Queen's Counsel, as then was, not to follow a reasonable and proportionate line of inquiry.

A. Yes.

Q. Given what you knew of Mark Ellison's advice and what you knew of Sir Jon Murphy's background, did you think that persuading them not to follow what you regarded as an essential line of inquiry would be difficult?

A. Very difficult to persuade them to say "Don't do the APU".

Q. Then:

"Option 3. Northmoor continues until the APU line of inquiry is reasonable and proportionately concluded."

The advantage:

"Lines of inquiry followed to natural conclusion; wherever that may be.

"Disadvantage: It continues beyond the handover of PM(A) and the departure of the Assistant Head of Northmoor."

In terms of the advantage of continuing, pursuing the line of inquiry to its natural conclusion, in effect wherever that may lead -- so whether it leads towards something having taken place or away from it, so producing evidence that might implicate or exonerate --

is that what you, as an investigator, wanted to achieve?

A. Absolutely, because, again, whilst we may have only had nine names on our list, those nine people may have been able to give us another nine or another nine, or you're looking in the wrong direction. We had to. It was essential to speak to these people. You couldn't ignore it. These could have been the last people and, as we know, one of them gave further information of other stuff. But, you know, it just proves that it was essential. We had to speak to these guys.

Q. In any way, did you regard the impending departure of PM(A) as being a relevant consideration when socialising the options for the existence of Op Northmoor?

A. Yes.

Q. So did you consider it a relevant consideration?

A. Not relevant, no. Not relevant but we knew of it.

Q. So you knew that that was in play when it came to the future of Op Northmoor?

A. It was clear that it was a consideration by the chain of command, as it were, yes, and it's documented, as well.

Q. Did you think that was appropriate?

A. No.

Q. Is that what the driver was here for the close down? It needs to end before the door is reached by --

A. I do think it was definitely one consideration and

certainly a factor in their decision making, yes.

Q. Those options were being circulated in late May with a view to them being socialised with members of the Executive Gold Group. If we look, please, to divider 133 and to 7 June:

"The DCGS will be briefed on this investigation."

That is Team 1.

"He's aware of the detail due to previous briefs, so this will be a general update."

And you've recorded as:

"The reason DCGS needs to be aware of Northmoor activity, PM(A) has directed this briefing."

Do you know whether or not DCGS was given the options for Northmoor's continued existence, be it suspension, continuation, or closure?

A. I'm not aware.

Q. If we turn, please, to divider 140. We're now into the middle of July, about four weeks or so later. These are the CEG briefing sheets.

CEG: the Command Executive Group? Is that right? I can't remember. There was meant to be a question mark at the end of that.

A. You know what? I can't remember either what it stands for.

Q. Somebody else is bound to work it out before you and

I do, and they can let us know in due course.

The action taken under "Silver update":

"... Gold Group consider all reasonable and proportionate lines of inquiry for investigations within Op Northmoor terms of reference have been completed ..."

17 July:

"Op Northmoor has been announced as disclosed ..."

I think that probably means "closed".

A. Closed, yes.

Q. "... to minister Armed Forces."

A. Yes.

Q. And then, if there was any doubt, on to page 140. The final entry on that page, which is the last entry for the briefing sheet. So this is 144:

"Op Northmoor is officially closing down."

In July of 2019, did you have investigators conducting in inquiries in Afghanistan?

A. Sorry, on July the?

Q. July 2019.

A. July 2019, I believe they were back by then.

Q. The investigators that had travelled out to Afghanistan, do you know if they were informed whilst they were out there that Northmoor was closing down?

A. I can't remember whether I actually had a discussion with them over the phone to say "This is what's

happening" or not, to be honest with you. But I'm pretty sure I would have briefed them, or certainly my DSIO would have told them.

Q. I mean, one of the allegations that they received while they were out there was from N7058, who reported the shooting of an Afghan male and the fact that a member of Special Forces would drop a weapon alongside those who had been killed?

A. Yes.

Q. Said to be an AK-47, as reported by N7058?

A. Yes.

Q. Is that the sort of allegation you would have wanted to have bottomed out or explored?

A. That is exactly the allegation. It takes you all the way back to this very -- the very start of this investigation. If you look at the bit of paper that was presented to us by --

Q. N1799 and N1201.

A. Exactly. The description given there correlates exactly as to what we're talking about. So whilst, you know, we didn't obtain anything tangible, or witness evidence relating to Tyburn, Objective 1, Objective 2, what we now had was exactly what we had from the very start, which was a witness, our very last witness, saying, "I have seen British shoot somebody, produce a weapon,

put it down, photograph it." Which gets you back, all the way back to the DW part of this in -- absolutely -- literally the crucial bit of evidence at the end was the bit that we really, really wanted. To say: okay, that's it. That is an eyewitness saying he's witnessed somebody British -- may have been American, you know, but his words were "British" through the interpreter. That's evidence. That's a witness saying, "I've seen -- I've actually seen this happen."

The problem we had was the question was put to me was: was this on Tyburn 1 and 2?

And the answer was: no, it wasn't.

And therefore, the answer is: well, if it's not on those three, we will deal with it later, because it's not within the terms of reference. So don't -- did that stop the decision being made for Operation Northmoor shutting? In the eyes of the senior officers, no, because it wasn't within the terms of reference. It wasn't TY, it wasn't 1 and 2 that we were investigating. It was a completely different incident.

Now my opinion is, what's the actual? Because you've just got the evidence which goes all the way back to the very start, the allegation being that British soldiers were killing unarmed individuals and placing weapons on those bodies to make it look like they had

presented an imminent threat to life and been killed. And we have an Afghan witness, an independent Afghan witness, telling you that he's watched this and seen it happen. What more do you want?

Q. In terms of the progress that you might have been able to make as regards that, I'm not going to invite you to speculate on further inquiries, but just this: if we turn back to divider 137 and to page 2:

"Verbal direction has been received that the allegation will be fully investigated but no action is to be taken until Assistant Head Northmoor has briefed DSF and written direction is received."

Is that how you wanted to go about conducting inquiries into possible allegations that those under the command of DSF might have committed unlawful killings and might have planted AK-47s on the body?

A. Absolutely not.

Q. Is that sort of liaison of assistance to you, as an investigator, or an impediment?

A. No, that's an impediment. You're just telling the people who are investigating, you're investigating what the reason is for it. Giving away our evidence.

Q. In terms of where Northmoor was as an investigation at this stage, we'd seen reference to the door. And we know that the impending departure of Brigadier Neal was

very soon. Did he have one hand already on the door handle at this point?

A. In my opinion, yes.

Q. You sought and received advice from the SPA in respect of both Objectives 1 and 2, which had been scoped and then investigated, and Tyburn, which had been investigated. I'm not going to turn to the detail of all of those but if we look, please, at divider 149, which is in respect of Tyburn, you submitted your advice for assistance -- sorry, your request for assistance -- on 29 July, as we see the date there. And this was after Northmoor had been closed down?

A. Yes.

Q. So we understand this, had there been a verbal briefing prior to you making this submission that that the evidential sufficiency test had not been met?

A. Yes, we had a conversation.

Q. What you've set out here is the alleged murder at common law, the Service Police Investigation Summary, the SPIS.

A. Yes.

Q. And you set out the complainant evidence from Mr Bang and Mr Yar, as he's termed, so Mohammed Bang and Saifullah Yar, and that is available for all to read. I'm not going to look at it.

You then identify the witness evidence, the evidence

from the Supporting Unit, and some of the evidence from the Afghan Partner Unit. There's no mention of the Op A information that you were provided with. Did that not feature in your assessment of the possible evidence available to you in respect of Tyburn?

A. I think I would have not considered it pertinent to this document, because otherwise we'd be going into the detail of every single little bit of information, information that we received. So it probably wasn't in here, from my recollection, because it's not that it wasn't relevant; it's just a case of there was no requirement, I don' think, to go into that level of detail in what is a service level police investigation summary.

Q. And you indicate, for the avoidance of any doubt, in paragraph 22, that the Office of the DSP has been consulted prior to compiling this investigation summary?

A. Yes.

Q. And a guidance to commanding officers is set out in paragraph 23:

"Having considered all the facts, there is insufficient evidence to refer any person subject to service law with a service offence."

Did you want to sign off the investigation into Tyburn at this point?

A. Into Tyburn, yes.

Q. Into 1 and 2?

A. Well, we knew there were still searches going on on the system.

Q. And there was APU still to speak to?

A. And there was APU still to speak to. We had opportunities to go back -- potential opportunities to go back. We know how difficult it was to speak to the nine that many managed to identify that were still serving and that would speak to us. We knew how difficult it had been, having had the individual at the very end give an account and then not be provided again to us.

So asked the question, was it comfortable to sign off? No, it wasn't. Reasonable and proportionate lines of inquiry for this investigation, I think were complete. That said, you know, by going back to the APU, et cetera, we may have been able to get further information, but from everyone that we spoke to that we could speak to, and the information that we could get from the servers, et cetera, and any footage that we were able to recover -- or not, as the case may be -- I think it was reasonable, at that time, the reasonable lines, and proportionate, had been completed with regards to this one.

Q. What about Objectives 1 and 2?

A. Again, I go back to the photographs. I go back to the photographs. As far as I'm concerned there was, you know, it is again a line of inquiry that is very, very uncomfortable to sign off because I know what we wanted to do, and that was a major line of inquiry that -- whether the opinion was towards what we thought it was or the other way round, doesn't matter. It's still something that needed to be asked. A question needed to be asked and an opinion given from an expert.

So saying that all reasonable lines of inquiry, all reasonable and proportionate lines of inquiry had to be followed for those ones within the boundaries of what we were allowed to do, yes. But that doesn't make me comfortable signing it off, no. Especially as, with regards to the timescales of what we had, we still had our guys flying back from -- from -- in the air, when I was asked the question, "Has everything been reasonable and proportionate?" Well, as I discussed with the SPA, my job is to review that evidence and then discuss it with the investigators, what they think, see if there are any further lines of inquiry, any further questions. They might have missed something.

But that wasn't -- that wasn't an opportunity afforded to us, because the evidence was still in the

air. When the question was, "Well, is there anything else?"

"Well, I can't tell you, I haven't reviewed it."

And the OOT was very much in agreement with me that this was a very, very rushed job at the end for a Form 3 to be submitted when neither of us had actually had the opportunity to finely go through those statements that had been recorded. Although we knew they were negative, according to the investigators, that doesn't mean to say we shouldn't have add the opportunity to review them prior to actually considering whether to submit a form 3, and therefore, in agreement with the SPA, that all lines of inquiry had been concluded. That opportunity just wasn't afforded to us.

Q. But a form 3 was submitted in respect of --

A. It was, it was.

Q. -- both of those investigations?

A. Yes, it was.

Q. And in due course on 5 and 7 August, if we look at dividers 150 and then 151, you submitted the SPIS in respect of both of them?

A. Yes.

Q. So our divider 150, on 5 August you signed off the SPIS in respect of Objective 1?

A. Yes.

Q. And we just look at the section on page 154 that deals with the OSW, operational staff work. There's no mention of the photographs there. Is there a reason why you didn't think it necessary to include, within the SPIS, that there were photographs about which you had concerns which had not been examined?

A. I don't know why I wouldn't have put them in there, to be fair.

Q. I mean, would it be difficult to sign off an SPIS when there was an obvious major line of inquiry still outstanding?

A. Yes, it would be.

Q. I mean, if you identify within the body of the SPIS a large "but" at the start of a paragraph, "But there is a significant or major line of inquiry that I wanted to have pursued, and I wished experts to look at photographs over which I had concerns, but was not allowed to do so and was stopped from doing so", might that make it difficult for the investigation summary to be signed off?

A. You are correct.

Q. If we look to divider 151, which is the SPIS in respect of Objective 2, that was signed on 7 August. And again, no concerns identified by you within the body of that document that you had additional inquiries that were

outstanding that you wished to have concluded.

A. Yes.

Q. Do you know now why you'd left out that, or those major lines, or major line of inquiry?

A. No. I can't think of why I wouldn't have put them in there.

Q. Can we just turn to divider 1 for a moment, and to tab 20. Behind tab 20, what I would like to do, please, is with your help to turn to look at page 58. Tab 20 includes the executive summary which, according to your witness statements, you had started to compile soon after joining Op Northmoor, because you'd been asked to do so, and that by the time the investigation came to a conclusion, it essentially represents your summary of everything that had happened?

A. Yes.

Q. Is that a fair way of describing it?

A. It is.

Q. And indeed, the criticism, if it is rightly characterised as one, that was made of you by Mr Pughsley, was that there was not a closing down report. And you have identified that, at least to your mind, this document stands in the place of, if not is the same as, a closing down report?

A. Yes.

Q. But this is a document that you began when you joined Northmoor and presumably added to throughout your time in the investigation?

A. That's correct.

Q. Now we've been thorough its contents largely with the other questions I've asked of you, but what I wanted to have, please, was your help as to the observations or some of the lessons that you've identified to the end. Again, I'm just going to identify some of the key phrases, and you can accept now whether you do or do not agree with them, or whether we've dealt with them already. But for example, 128a, you identify straight away, "investigation delay". So delay to the start of the investigation itself. Was that a problem for Northmoor?

A. Yes, it was.

Q. In paragraph b, you identify: "unrealistic expectations of personnel, and the criteria for the investigation team did not reflect the resource available at the time."

A. Yeah.

Q. Was that a problem?

A. It was, yeah.

Q. In paragraph c you identify the "unrealistic demands on individuals, in particular some of whom were required to

triple hat", one of them being you. Did that cause problems for Northmoor?

A. Of course.

Q. Over the page on paragraph d, you identify "unhelpful briefings and conversations and unstructured and unrecorded briefings".

Did that pose a problem for the investigation team and for Northmoor as a whole?

A. Yes.

Q. You identify the "stalling of avenues of investigation" in paragraph e. Did that present difficulties for you and your team?

A. Yeah.

Q. Then: "the forensic data handling capability which was flawed", as you've set out there?

A. Mm-hm.

Q. Essentially, with that, did it come to this: it was never up and running?

A. It was not.

Q. Despite the significant investment put into it?

A. Yeah.

Q. There's then, you identify, the declaring of suspect status as being "fundamentally flawed", and we've already had your evidence in respect of that. But then you identify "significant delays in obtaining the

release authority for the data owned by Special Forces."

Given that you kept being, told time and again, to do this by consent, not by exercising your powers of search and seizure, do you feel that you've failed to make the progress you might otherwise have made by simply asking for, rather than taking, what you wanted?

A. I think that would be an appropriate summation, yes.

Q. As we can see at paragraph k, that led ultimately to a lack of access to the relevant datasets.

And then the theme that I've asked you about already: "regimental amnesia", or, as you've put it, "suggestions of coaching of witnesses by former SF personnel"?

A. Yes.

Q. Did you really consider not only that people were deliberately forgetting things, but that they might have been coached in the answers they gave?

A. Yes. I mean, as I say, this document was compiled with the help of the investigators themselves, who provided input as to what they thought were issues, good, bad. And one of the observations was brought to me by the investigators, who said, you know, when doing witness interviews with the disclosure officers, because they had -- because they had been given disclosure and some time to chat to their colleagues before going into an

interview or a witness statement, that it was clear to them that the answers were the same. And if we'd not had the SF protocol in place whereby we'd been able to speak directly with the individual without any interference, shall we say, from any other member in the room, then the thought was -- and I agreed with them -- that, actually, we'd have got better evidence.

But because they were the ones on the ground doing the interviews, their take on it was well, the answers were so similar that it couldn't be anything more than interference from the disclosure officers giving them coaching as to what to say before we went into it, because the answers were the same over and over and over again.

Q. I'd like to just ask you about an email that you sent following the close down of Northmoor some months after it was closed down, and I need to take you to file 2 and divider 160, please.

There are two reasons for inviting you to look at this if I may, please. First to ask you why it was, in October 2019, some months after Northmoor had been closed down, you were still identifying possible lines of inquiry that might be pursued, and secondly, to ask you about the "gentleman's chat" that you made reference to about 40 minutes or so before now.

The email that you have sent here on 1 October, sent to John Harvey, Lieutenant Colonel Harvey, Gold Commander as was, but no more. And recommendation is regarding the interview of N17861, of the individuals you wanted spoken to in connection with the command responsibility issue, he having been the Commanding Officer of SFHQ Afghanistan.

A. Mm-hm.

Q. And it's noted here in paragraph 2a:

"1786 was employed as CO in theatre and was the author of the TTP review conducted at the material time."

And then:

"Invited to agree the CO must be interviewed as part of Op Northmoor. This recommendation should be raised with AH TECH."

A. Mm-hm.

Q. Now this is in October of 2019. The investigation was announced as closed in July of that year. And as to N1786, I don't need to take you to it, but can I simply remind you that in your witness statement you said that PM(A) gave a direction that he would not be formally interviewed, and that any discussion with him would be a "gentleman's chat"?

A. That is correct.

Q. You said that you firmly disagreed with that, and that you weren't prepared to have a chat with someone you regarded as potentially a significant witness?

A. Correct.

Q. Why were you still, in October of 2019, identifying the need or the requirement for him to be interviewed?

A. Because, as I was concerned, there were -- whilst the reasonable and proportionate lines of inquiry had been done, we knew there were certain individuals on our list of those who may or may not have information that weren't at the scene, but may have had knowledge of what may have occurred at the relevant time. They were outstanding. They were put on the backburner, they were left until last, put on the backburner, because of the fact that they weren't directly at the scene at the time. But for completeness of the investigation and as per what Mark Ellison QC, at the time, advised us to do was to speak to every individual. That included the command culpability element, or command element.

So again, I still wanted to speak to that individual to almost close off the very last bit to say, "Okay, well actually now we've spoken to all the individuals that we had identified that may have relevant information to regard to Operation Northmoor as a whole."

But again, I wanted to do it in the appropriate manner and in the way that we had conducted the interviews under Operation Northmoor.

Q. If we look on to page 160, at paragraph 7, you identify the concerns you certainly had in 2019:

"It must be acknowledged that the investigation could attract adverse criticism in any review should we ignore the hierarchy involved in the incidents in question at the time. Ultimate command responsibility on the ground and their obligations under the Armed Forces Act sat with N1786. Failure to interview the hierarchy with regards to any decisions made and their overall assessment of the sub-units under their command could lead to further criticism."

A. Correct.

Q. And is that what motivated your desire to encourage an interview of N1786?

A. Yes.

Q. And that interview, was that to be a "gentleman's chat", or a formal interview --

A. A formal record of their evidence, their witness evidence, in the form of section 9 statement. Was not prepared to do anything -- they were not a suspect, but they were a relevant party to this investigation, to Operation Northmoor. And therefore, their evidence must

be recorded appropriately, in line with my strategies, the policies we put in place, and actually, that is the way we were conducting Operation Northmoor. You can't just change the way you speak to someone just because they've got a bit of rank. It doesn't work that way, as far as I was concerned.

Q. And obviously paying due deference to rank at the appropriate moment, in any way were you intimidated by the seniority of those you were being asked to speak to, or by the fact that they were members of Special Forces rather than any other regiment?

A. No, no.

Q. Were you aware of any reason why Brigadier Neal might not want senior members of Special Forces spoken to by any means other than a "gentleman's chat"?

A. Not that I can recall as to any reason why they would want us to do it like that.

Q. Do you know if he was familiar with, or friendly with, senior members of Special Forces?

A. I know he was -- had had -- he knew of certain individuals because he'd been on courses with them, but that was all declared as part of the disclosure process, as part of their -- the conclusion process? Yes -- as to saying, "Yes, I am aware of these individuals. I've been on a course with them; I know the names."

So yeah, we were aware that he knew these individuals, but that was all taken into consideration, especially when he was appointed as PM and in charge of Operation Northmoor.

Q. Is there any risk, when it comes to the investigation of Special Forces and, in particular, officers or senior commanders, that unnecessary respect or deference is extended to them because of who they are?

A. From my experience of this, I would say that it doesn't help investigations. It doesn't help that -- I understand why they are given a special caveat, absolutely. Because of the security, et cetera, et cetera, national security, et cetera, et cetera. But they should not be treated any differently when you're conducting investigations. Handled in certain way, absolutely. I get that. For anonymity, for security reasons. But not change the rules as to the way you conduct an investigation just because someone has a different rank or different role.

Q. I mean, ultimately, does it matter which regiment or which garrison you hail from? You should all be treated the same when you're being investigated?

A. Correct. Absolutely correct. They're all subject to the Armed Forces Act and law, in all the same way.

Q. Now you have elected to be extended in post in order to

assist with the close down of Operation Northmoor?

A. I did.

Q. And then moved on to be part of the Judicial Review Team, or the team assisting the judicial review that was being run in respect of some of the allegations that Northmoor had looked at. As to that post, what actually was your role when it came to assisting, or liaising with, or engaging with those conducting the JR on behalf of the MoD?

A. It was to review the documents and look to see if there were any issues which would -- if there were any issues which we potentially shouldn't be disclosing to a public environment, basically.

Q. I mean, in terms of your knowledge of the investigation, do you think you were in a uniquely good position to help anyone who wanted to understand what Northmoor had done, why it had done it, and what success or failure it had encountered?

A. I think so. And, you know, the executive summary I wrote, and the observations at the end, were clear points where I pulled out our failures. And there's an annex to show, you know, warts and all, actually, there were some mistakes. Admittedly, we've since then identified even more, and some failures. But yeah, to have me in that position to be able to say, "Well,

actually, I know this stuff inside out", and if you're looking for certain documents or rationale, the ability to be able to help the JR was probably the perfect person to do it, in many respects, because I knew the documents, I knew where they were, and what they sometimes meant.

Q. Should Northmoor have been stopped when it was?

A. No.

Q. Do you believe you could have gone further with the inquiries if you were given the opportunity to do so?

A. Certainly with other inquiries, yes.

Q. And do you believe that you could have found evidence that either pointed towards, or away from, the probity of the allegations being made?

A. Potentially, yes.

Q. Would you describe Northmoor as "extensive, rigorous and thorough"?

A. Within the capabilities that we had and the remits we had, yes. We were bound by the terms of reference, et cetera. With the -- with the facilities we had, with the access, with the computer systems, et cetera, et cetera, yes, it wasn't expedient by any stretch of the imagination, but it was thorough, and people worked very hard on what they were doing.

Q. If anyone were to suggest that there was no realistic

prospect of a more extensive investigation being carried out, would that be right or not?

A. No, I don't think it would be. I think there are -- there certainly were -- if, as I say, for instance, perhaps the terms of reference had been extended, widened, then more extensive searches could have been conducted to maybe prove or disprove what we were looking at. They may well have found other things and then been able to prove or disprove any further allegations. But how long is a piece of string, as I say.

Q. Do you think, if you'd been given the opportunity, you might have got to the bottom of it all?

A. Me personally?

Q. Yes.

A. Maybe not. The length of time it could have taken, I could have again been superseded by the next SIO or the next Silver Commander who came in -- because, as I say, I just don't know how long this could have gone on for.

Q. But in terms of outstanding lines of inquiry, are there lines of inquiry you would have wanted to see concluded before your role was brought to an end?

A. Absolutely. And especially the APU individual who gave us, at the very end, what we'd been looking for in the

very first place. Okay, without the detail, without the time, date, place, because that wasn't available to us at the time, but what he's suggesting at the very end, the last person, it's that bus that arrives outside the camp gates which you weren't expecting on the very last day when you were packing up. That was our guy, and that was a major line of inquiry which should, in my opinion -- it's too late now because you can't go back there -- but in my opinion, at the time, more effort should have been made to obtain that information because it's crucial, absolutely crucial, to all of this.

MR GLASGOW: Mind my back for one moment. I do apologise, Major.

It's both an end state and an exit strategy, Major, just before 4.30. I've nothing further for you, sir. Thank you for your assistance.

Sir, do you have any questions for Major Cox?

SIR CHARLES HADDON-CAVE: I don't, Mr Glasgow. Thank you.

Well, Major Cox, that's a very long innings you've had. Can I thank you very much indeed for coming to give evidence to me and the Inquiry. Can I thank you for the very full and careful way you've answered all of Mr Glasgow's questions. I'm very grateful to you, and I'm very grateful for all the hard work that you've put into this hearing.

Mr Glasgow, I'm very grateful to you and your team for all the hard work that has gone into this hearing, particularly preparing all the documents.

Can I thank the team that have made the arrangements for this hearing, and for those who have made it possible to hold this hearing in OPEN. Can I thank everybody for their quiet attention. We will now please adjourn. It's time, I think, for everybody to have a cup of tea and piece of cake, probably. We will reconvene tomorrow morning at?

MR GLASGOW: 10.00 please, sir.

SIR CHARLES HADDON-CAVE: 10.00, please. Thank you very much.

(4.23 pm)

(The hearing adjourned until 10.00 am the following day)

I N D E X

MAJOR MATTHEW COX (continued)..... 4

Questions from COUNSEL TO THE INQUIRY..... 4

(continued)