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Witness name: The Rt. Hon. Johnny Mercer MP
Statement Number: 01
Dated: 24 November 2023
Exhibits: n/a

INDEPENDENT INQUIRY RELATING TO AFGHANISTAN

**WITNESS STATEMENT OF JOHNNY MERCER MP
DATED 24 NOVEMBER 2023**

1. I, Johnny Mercer, am making this statement in response to a Rule 9 Request dated 30 August 2023 ('the Rule 9 Request') because the Inquiry has requested a witness statement from me dealing with the matters listed at paragraph 5(a)-(e) of the Rule 9 Request.

Introduction

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2. I am the Member of Parliament for Plymouth, Moor View and the Minister for Veterans' Affairs. In the course of preparing for this statement I have been provided with the documents referred to at paragraph 5(c) of the Rule 9 request; and a copy of a letter that I wrote to the then Secretary of State for Defence in August 2020 (to which I refer further below).
3. The information in this statement is based on my experiences of over five years of being in Government and leading on the issue of legislating to address the issue of vexatious claims against veterans. It is information within my personal knowledge except where otherwise stated. I have recounted conversations and events that occurred some time ago and I have sought to be as accurate with respect to the dates and times of those conversations as is possible given the passage of time.

Relevant professional background

4. I joined the British Army in 2002 and served until 2014. I served operationally in Afghanistan on three occasions: (a) with 29 Commando in 2006; (b) attached to the UK Special Forces ('UKSF') from 2008 until early 2009; and (c) with 1 LANCs and 2 LANCs in the summer of 2010.
5. I was elected to Parliament in 2015 and I was a member of the Defence Select Committee between 6 July 2015 and 3 May 2017, and 11 September 2017 until 6 November 2019.

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6. On 28 July 2019, I was appointed by Prime Minister Boris Johnson MP to the position of Minister for Defence People and Veterans. I held this position until 2021. Since then, I have held the following cabinet positions:

(a) Minister for Veterans' Affairs, July-September 2022 (appointed by Prime Minister Boris Johnson MP);

(b) Minister for Veterans' Affairs (October 2022 to present) (appointed by Prime Minister Rishi Sunak MP).

My knowledge of the issues referred to in the Rule 9 request

7. Before I address the specific questions in the Rule 9 request, I will set out the background to my understanding and knowledge of the matters with which those questions are concerned, specifically, allegations with respect to 'kill or capture' detention operations in Afghanistan.

The Defence Committee IHAT Inquiry (2016-2017)

8. In April 2016, the Defence Select Committee announced that a Sub-Committee would hold an inquiry into the question of Ministry of Defence ('MOD') support for former and serving personnel subject to judicial processes and, in particular, investigations by the Iraq Historic Allegations Team ('IHAT'). IHAT was set up in 2010 to investigate allegations by Iraqi civilians of abuse said to have been perpetrated by UK armed forces personnel between 2003 and 2009. I was appointed as the Chair of the Sub-Committee.

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9. The Sub-Committee reported in February 2017 and concluded that the IHAT process had been exploited by two law firms in particular resulting in over 3,000 claims being brought. The Sub-Committee found that a large number of those claims were accepted by IHAT despite a lack of credible evidence and the length of time that the investigations took to complete caused those under investigation (who were ultimately cleared of wrongdoing) to suffer unacceptable stress. The Sub-Committee concluded that the explosion of so-called 'lawfare' in the United Kingdom had directly harmed the defence of our Nation and the report contained recommendations and a set of investigative principles to be applied in future.

**The Overseas Operations (Service Personnel and Veterans) Act 2021
and the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023**

10. My work on the IHAT Inquiry confirmed concerns that I had held for some time about the vexatious nature and industrial scale of litigation against members of the UK's Armed Forces after they had served the Nation on combat operations. My work on these issues eventually led to the Overseas Operations (Service Personnel and Veterans) Act 2021 and the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, both of which have now received Royal Assent.
11. This work was never about granting immunity from prosecution to the armed forces. Rather it was based on two core principles.

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12. Firstly, where there is clear evidence that crimes have been committed by service personnel, those individuals must be held to account for their actions irrespective of the time that has passed. We rightly expect our service personnel to hold themselves to high standards and the vast majority do so. Where those high standards are not upheld, public confidence is undermined and it is vitally important that wrongdoers are seen to be held to account to ensure that those standards are maintained.

13. Secondly, industrial scale litigation and vexatious claims do nothing to hold wrongdoers to account and cause real harm to the service personnel and veterans who are caught up in the system. Those individuals are entitled to protection and my work on the Overseas Operations (Service Personnel and Veterans) Act 2021 and the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 sought to provide that:

Informal allegations about Afghanistan

14. Through my work on the above issues, as well as through the professional and personal relationships I formed during my years in the Armed Forces, I became aware of allegations that UK special forces had been involved in unlawful killings in Afghanistan between 2010 and 2013.

15. In the paragraphs that follow I will explain, to the best of my recollection, how and when the allegations were brought to my attention. It is important to note

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that, while gossip and rumour are common in military circles, I have always tried to distinguish between allegations that fall into this category and those that are potentially more serious and require investigation. The conversations I have recounted below are not the only conversations I had about alleged wrongdoing in Afghanistan during this period, but they are the ones that stand out most in my memory and that I considered to be significant at the time.

16. In approximately 2017, following my work on the IHAT Inquiry, I was told by serving officers whom I knew from my time in the armed forces that I had done a "great job" but I needed to be careful in relation to Afghanistan because there were serious allegations of incidents that occurred within UKSF that made members of that community feel very uncomfortable. I specifically asked whether Ministers were aware of the issues and was assured that they were.

17. I was also made aware of an allegation by a [REDACTED] UKSF individual first hand, that he had been asked to carry a "dropped weapon" (a pistol) during a recent tour of Afghanistan. I understood this to mean that he had been asked to carry an extra weapon (one that could not be linked to NATO forces) to be dropped on the body of a person to make it appear as though they had been a legitimate target as a combatant. The request made him uncomfortable and he refused.

18. I found these allegations very concerning but I believed that Ministers were aware of them and that they were being investigated by the MOD.

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Appointment as Minister for Defence People and Veterans

19. In July 2019, I was appointed by Prime Minister Boris Johnson MP to be the Minister for Defence People and Veterans in the MOD and the Cabinet Office. On my appointment, the Prime Minister specifically mentioned two issues he wanted to address. The first was the Armed Forces Compensation Scheme (a scheme to compensate serving and former service personnel injured as a result of their service in HM Armed Forces). The second was the prosecution of veterans of the Northern Ireland conflict. I informed the then Secretary of State for Defence, the Rt Hon. Ben Wallace MP, of these priorities and I subsequently began work on the Overseas Operations Bill. As explained above, this was the culmination of years of campaigning on my part to bring an end to vexatious claims against members and veterans of the Armed Forces.

Discussions at the MOD

20. When I joined the Department, I began working with MOD officials on scoping the Overseas Operations Bill and I raised the issue of unresolved allegations about Afghanistan. As a result, I had a number of meetings with the Director of Judicial Engagement Policy ('DirJEP') at the MOD, as well the Chief of Defence Staff ('CDS') and the Secretary of State. It is possible that a written record of my conversations with DirJEP was made by the MOD, but the other

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conversations were private and I do not believe that a written record of them would have been made.

21. I explained that the information I was receiving about what had happened in Afghanistan (including that noted above) was leading me to have real concerns. Specifically, I was concerned that proceeding with the Overseas Operations Bill while the MOD was simultaneously investigating serious allegations with respect to extra-judicial killings in Afghanistan was placing me in an invidious position. I did not want to be the political cover for contentious legislation unless I properly understood the nature of the allegations and therefore the risk that we would be carrying. I suggested to the Secretary of State that we satisfy ourselves that the allegations were unfounded before progressing. He agreed and asked me to get to the bottom of what was going on.

22. As a result, I received a briefing from officials in relation to Operation Northmoor which was investigating allegations in relation to Afghanistan. I also asked DirJEP to arrange for me to speak to the then Director of Special Forces ('DSF') and the Chief of the General Staff ('CGS'). I also had a conversation with the Provost Marshall (Navy) who is the competent authority for the investigation of all criminal and disciplinary offences investigated by the Royal Navy Police. During all of my conversations with DSF and CGS I was assured that the allegations had been investigated and were untrue.

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23. On a number of occasions, I asked what the source of the allegations was and who had first raised them. As a result, I was provided with a highly classified document by an MOD official who allowed me to view it and then took it away. The document was an email from the then Commander of the [REDACTED] UKSF3 to DSF. I believe this document is summarised in Inquiry Document 3685 at p.211, para. 59(b). Except for this document, I was not shown any other documentary material with respect to the allegations of extra-judicial killings or the operations in which those allegations were made.

24. I asked whether it was possible to view the Full Motion Video ('FMV') of the detention operations in which civilians had been killed because, in my experience, FMV was routinely deployed in the field and this type of evidence was likely (at least to some extent) to assist my mind in proving or disproving the allegations one way or the other. I was told that there was no FMV available for any part of any of the operations we were concerned with. This was not plausible.

25. The MOD had brought in a retired Chief Constable called John Murphy to investigate the allegations. He told me that he had asked to view the mission reports and FMV of a number of operations selected at random and was also told that there was no FMV. He accepted this anomaly; the Secretary of State accepted this anomaly; I simply could not. Any evidence to refute the

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allegations of extra-judicial killing would have been helpful, but there was none.

26. In the Autumn of 2019, the first Panorama allegations were raised. By this stage, I was aware of the nature of the allegations being investigated by Operation Northmoor as well as the allegations in the case of Saifullah and another case (which I recall was called Bang) which I was told were outside of the Operation Northmoor envelope.

27. In addition to the absence of any FMV, there were also other aspects to the allegations (as I understood them at the time) that I found concerning. There was the detail and the specific way they were presented, along with the implausibility of the explanations given that alarmed me. My fundamental concern was that the behaviour described by the [REDACTED] Sub Unit – namely that multiple detained individuals had repeatedly gained access to weapons post-detention and sought to take on the [REDACTED] Sub Unit against vastly superior numbers and capabilities - was simply not something that I had ever seen or heard of happening during my own extensive combat and non-combat experiences with Units including UKSF. Neither could I find anyone versed in these operations who had ever heard of that situation arising. To be asked to believe it happened numerous times was again not plausible.

28. I also found it implausible that none of those conducting the operations could remember anything about those operations. I note that a Judge later

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described this as “collective amnesia” and I agree this is a good description. I would not have expected any individual to be able to look back and necessarily recall a standard day in the field, but I did believe that a day in which multiple individuals (and in some cases children) were killed would have stood out in the memory of all of those present.

29. Another layer of implausibility was the fact that the number of persons killed in these incidents significantly and repeatedly exceeded the number of weapons found on the targets.

30. At this stage, although I was very concerned, I maintained my faith in the processes that had been set up by the MOD to properly and fully investigate these allegations. I believed that either those processes would result in wrongdoing being identified and the wrongdoer(s) held to account, or the allegations would be found to be unfounded. I also strongly believed that this process was necessary to protect the MOD from the consequences of ‘lawfare’ given the real risk that unresolved allegations would fuel a future round of industrial scale claims against the majority of Afghan veterans who had served with distinction and professionalism.

31. My principal interest in the issue continued to be from the perspective of my ongoing work advancing the Overseas Operations Bill. I had been asked by the Secretary of State to get to the bottom of the allegations so that we could take an informed view of the political risk in advancing this legislation. As I

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have said, I was not interested in rumour or gossip, but the allegations did not seem to me to fall into that category. I was not satisfied that there was no strategic risk from these issues, either to HMG or myself, in advancing the Bill and I made those views explicit to the Secretary of State, CGS and DSF.

32. I told them that we would be foolish to expend so much political capital on protecting service personnel and veterans from vexatious and industrial scale claims if there were serious allegations of this nature that had not properly and professionally been dealt with. I specifically recall a conversation with CGS in which I told him in strong terms of how personally frustrated and disappointed I would be if my efforts on behalf of my generation of veterans from Afghanistan and Iraq were to be tainted by the MOD's failure to properly address these issues.

Allegations made by the Sunday Times and the BBC

33. In late 2019, a joint Sunday Times/BBC Panorama investigation alleged that UK Special Forces had killed civilians (including children) in Afghanistan in 2012 and that the incident had been covered up by the MOD. The media reporting included reference to alleged "death squads".

34. I recall seeing the reporting of this investigation and in particular the reference to "death squads". These allegations seemed to me to be on a different level to the ones I knew that the MOD was investigating. The allegation of the

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deliberate use and sanction of "death squads" sent to execute people was so far removed from the professionalism and the standards that I had witnessed during my time with UKSF - and which I knew to be upheld by the vast majority of service personnel - that I did not believe them to be true.

The Adjournment debate

35. In January 2020, the Rt Hon. Stewart McDonald MP of the Scottish National Party secured an adjournment debate on the floor of the House of Commons concerning allegations of misconduct including, but not exclusively limited to, UKSF operations in Afghanistan.

36. As I have explained, on a personal level I had serious concerns surrounding the allegations of extra-judicial killings in Afghanistan, but I believed I had no option other than to trust the investigation process set up by the MOD to ultimately resolve these issues one way or another. As the Responding Minister, it was my obligation to respond on behalf of the Department, not on my own behalf, and I did so on the basis of the information that I had been provided with, including the assurances that I had received from CGS, DSF and the Secretary of State explained above.

Further allegations in the Sunday Times

37. In August 2020, further allegations were printed in the Sunday Times about wrongdoing in Afghanistan including details of which I was previously

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unaware. Infuriatingly, the Sunday Times quoted from documents disclosed by the MOD in court proceedings which I had never seen.

38. I was on holiday in France when the Sunday Times published the article. I spoke to the Secretary of State, who was also on holiday, and I told him that it was clear from what had been reported that:

- (a) information existed within the MOD that I had not previously seen;
- (b) I was not prepared to be the political force behind protecting our Armed Forces personnel from vexatious and industrial scale claims if we could not demonstrate the appetite or professionalism required in dealing with allegations of this nature;
- (c) It was clear that [REDACTED] UKSF personnel were talking to the newspapers; that only those with intimate knowledge of these operations could know the type of details that were in the story.

39. On 5 August 2020, the Secretary of State convened a meeting with the Senior Defence leaders and I flew up from Cornwall to attend. The Secretary of State was displeased that "the first I heard of some of this was in the Sunday Times". I reiterated to him, and all the senior leaders present, my view that the MOD's failure to get a grip on these allegations was placing us in a very difficult position.

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40. I also made it clear that, personally, I was extremely disappointed and angry that I had not previously been shown the documents that featured in the Sunday Times reporting. I formally wrote to the Secretary of State and I believe that the text of that letter is available to the Inquiry. I also had a number of difficult conversations with the Secretary of State in the weeks that followed. I wanted to support him in working to properly investigate the allegations but I clearly warned him that we had to grip this issue before the MOD was ordered into a judge-led inquiry. He seemed to recognise what I was saying and I believe that he wanted there to be a proper investigation. I told him that I did not believe CGS and DSF when they told me that they had fully and exhaustively investigated the claims.

41. I left the department eight months later and I had nothing further to do with the MOD's formal response to the allegations. I was subsequently contacted by multiple media outlets and confronted with my alleged role in "trying to shut down" the allegations and "cover-up abuses". These allegations were of course unfair and untrue but I did not comment and instead referred the journalists back to the MOD.

42. I was also approached by some of the individuals who had originally raised concerns about Afghanistan with the MOD. The Department's failure to properly investigate the allegations had a serious negative impact on their mental health and their perspective of their time in service. I reiterated to each

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that I had done what I could but the responsibility for this now lay with the
MOD and the Secretary of State.

The Rule 9(1) Questions

**Para. 5(a): In January 2020, was it the Minister's understanding that
Deliberate Detention Operations that were carried out by UK Special
Forces in Afghanistan were not 'kill or capture' operations, but were
'capture' operations?**

43. In January 2020, my understanding was that Special Forces in Afghanistan
carried out Deliberate Detention Operations ('DDOs') in which an individual
who presented no threat and/or who immediately surrendered would be
detained and that to kill a person in that situation would be illegal.

44. Prior to the BBC/Panorama allegations, I was not familiar with the concept of
"kill or capture" operations which was a term that, to my mind, was an
Americanism; I never saw that phrase used when I was in UKSF or at the
MOD. I was familiar with "kinetic strikes" which were deliberate kill operations
which I have conducted personally on many occasions, under strict
conditions, but that was not what these allegations were concerned with.

45. As I have explained, in January 2020, I was aware of unresolved allegations
with respect to civilian deaths that had occurred during detention operations,

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but I did not believe that UKSF were operating "death squads" or carrying out "kill or capture" missions.

Para. 5(b): What was the basis for the Minister's understanding?

46. My understanding was based on my own experiences in UKSF and the information provided to me by the MOD during my time as a Minister, including the repeated assurances that I was given by DSF and CGS.

Para 5(c): was the Minister shown, briefed upon, or otherwise informed (whether in general or specific terms) at the time, of the content or elements of the contents of the documents listed in para. 5(c) (and, if so, please identify which ones)

47. As noted, I was shown an email that I believe is described in Inquiry document 3685 at p.211, para. 59(b).

48. Other than that, I was not shown any of the documents listed in para. 5(c) of the Rule 9(1) request and I was not informed of their contents.

Para. 5(d): was the Minister made aware of all of the Rules of Engagement the Deliberate Detention Operations referred to in para. 5(c)(ix) to (xxi), above, were subject to, and the parameters of those Rules?

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49. I was not made aware of the DDOs referred to in the documents in para. 5(c) or the Rules of Engagement that those operations were subject to. I do not believe that there are any circumstances where the Rules of Engagement would permit the execution of a person who had surrendered or posed no threat.

Para 5(e): Any other matters the Minister wishes to mention or draw to the Inquiry's attention?

50. I have described above my concerns about the allegations with respect to extra-judicial killings in Afghanistan. Nothing I have seen since my time as a Minister has allayed those concerns. For example, I have recently been working to rehome our former Afghan partners who served with UKSF in Afghanistan and, during this process, have been made aware of information that has confirmed some of my worst fears.

51. I believe that mistakes were made in the investigation of these allegations. Specifically, rather than ordering a Tactics, Techniques and Procedures review following the incidents, I believe that the MOD should immediately have referred the cases to the Special Investigation Branch of the Royal Military Police. This approach might have led to better evidence recovery which would have helped the allegations to be resolved one way or another.

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52. While I do not believe that there has been a systematic cover-up, I do believe that there may have been a culture of 'omerta' within special forces; a failure to treat contemporaneous accounts by Afghan nationals as credible; and a lack of determination and ruthlessness to get to the bottom of what are the most serious allegations that can be levelled at a [REDACTED] UKSF unit.

53. I always relied on the fact that there was a robust process in place that was capable of properly and effectively investigating these allegations and, if necessary, holding wrongdoers to account. I therefore make no secret of the fact that I feel entirely let down – both by the Unit and the Commanders involved, and by the MOD – that these serious allegations which undermine my efforts on behalf of veterans were not properly investigated. I am saddened and disappointed that the work I undertook sincerely and in good faith to limit the scope for vexatious allegations against service personnel and veterans will inevitably be tainted by these serious errors by individuals of whom I reasonably expected a lot better of.

Statement of truth

I believe the contents of this statement to be true.

Signed: [REDACTED]

Dated: 24.11.2023

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