

INDEPENDENT INQUIRY RELATING TO AFGHANISTAN

SUMMARY OF N1788's EVIDENCE HEARD DURING CONCERNS AND COMPLAINTS PART 2

WARNING: This evidence is subject to the Inquiry's Restriction Order dated 31 May 2024. The Chair granted anonymity to witnesses who gave evidence during this set of CLOSED hearings ('Concerns and Complaints Part 2') for the reasons set out in his Ruling dated 31 May 2024. The Chair's Restriction Order prohibits publication or dissemination of the identity of N1788, or any information which might lead to their identification, and prohibits publication or dissemination of other restricted information.

For the avoidance of doubt, where documents published by the Inquiry have been redacted and a gist or cipher placed over the redaction, or where square brackets are used in a transcript extract, this is because the Inquiry is restricting from publication or dissemination the underlying information in accordance with the Chair's Restriction Order.

N1788 was questioned by Lead Counsel to the Inquiry, Oliver Glasgow KC, in a CLOSED hearing in Autumn 2024, over approximately two days. The following is a summary and, where possible and relevant to do so, a transcript of sections of the evidence, with any sensitive terms redacted and replaced with a gist or cipher in square brackets.

In 2011, N1788 was Staff Officer 1 ("SO1") J35 Campaigns at HQ DSF with recent operational experience of conducting Deliberate Detention Operations ("DDOs") in Afghanistan. He was directed by N1466 to consider a sample of Operational Staff Work ("OSW") generated by Sub-Unit 1A ("SU1A") and then by DSF to support Commander SFHQ(A)'s review of the Tactic, Technique and Procedure ("TTP") of sending a male back into a compound to assist in its clearance as part of a DDO.

Amendments to N1788's Witness Statement

N1788 confirmed his statement to the Inquiry dated 22 April 2024. N1788 had minor amendments to make to his statement. First, at page 10 paragraph 19, N1788 stated he '*was not a party to, or aware of, [N2108]'s email to ACOS Ops*'. Although he did not recall it at the time, N1788 clarified that a subsequent search showed he was in fact copied into N2108's email (MOD-198-0002062-A). Second, N1788's witness statement stated that he did not recall briefing N1802 on the TTP Review following his return from Afghanistan. N1788 clarified that a further search found that there was a plan for him to brief N1802 even if it did not carry through, which he did not recall. Third, at page 16 paragraph 30, N1788 clarified that he was not sure who the individual referred to as 'CO of UKSF3' was, but it was not N1790. Fourth, moving onto page 21 paragraph 41(c), N1788 clarified that the Afghan male being '*accompanied (at a safe and respectful distance) by a [Sub-Unit] member to retain control*' involved the UKSF member taking up a position at the access point rather than necessarily accompanying him in the way that might be commonly understood. Lastly, N1788 clarified that

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at page 16 paragraph 42, where he had written ‘*with more distance put between him and the [Sub-Unit]*’, ‘more’ should read ‘less’.

Overview of Military Career and role in UKSF Headquarters

N1788 set out details of his military career. This included identifying material, and material that is operationally sensitive and relevant to the evidence that followed, which cannot be gisted.

N1788 confirmed that he was a member of UKSF. At the time, he had recently finished a tour in Afghanistan during which he held a UKSF1 Sub-Unit command appointment and had carried out DDOs. N1788 confirmed that he then became SO1 J35 Campaigns and responsible for UKSF operations in Afghanistan.

N1788’s responsibilities as SO1 J35 Campaigns were to manage the day-to-day operational activity pertaining to his operational portfolio. This included overseeing reports and returns from theatre, dealing with policy from MOD Main Building, ensuring the team had directives that covered relevant operational activity of UKSF in Afghanistan, and providing a management perspective on the smooth and correct running of operations on behalf of ACOS Ops and DSF. N1788 had direct interface with the Commanders on the ground in Afghanistan and could feed that information up the Chain of Command to ACOS Ops and DSF. However, on a day-to-day basis his engagement was with other Staff Officers rather than the Commanders themselves. N1788’s role meant he was responsible for the daily management and control, rather than command, of issues arising in UKSF operations in Afghanistan.

N1788 would obtain information relevant for the performance of his role from weekly reports and returns and would forward them on where appropriate. He would receive information from multiple sources. N1788 and his team would review the operational summaries (“OPSUMs”) to see whether anything needed escalating or required advice to be given. N1788 explained that there were normally a number of Staff Officers dedicated to the Campaigns team at HQ DSF. For a period of time one of those was N2444, as an SO2.

N1788 was asked about his management style. He explained that the tempo of operations made it impossible to read everything. Whilst there was a hierarchy it tended to be quite a flat and fast structure where tasks were apportioned based on people’s availability. His own management style was to share as much as possible but protect subordinates where appropriate. It was more of a collegiate and collaborative exercise. Anyone in his team could provide reports up to ACOS Ops but he would generally be made aware of the material.

N1788 confirmed he found it easy to discuss things with his subordinate, N2444, they had a good working relationship and sat next to each other. N1788 described N1802 as a man with very high standards but who applied them fairly: “*he was as hard on himself as he was on anyone else and I never felt how he dealt with people, you know, necessarily went beyond, you know, fearsome*”. N1788 confirmed that it was his responsibility to deal with any kind of issue that fell within his remit and if sufficiently important, to take the issue to N1466 who could then take it to DSF. N1788 explained that if someone was working on an issue, DSF could also go directly to them.

The nature of the concerns regarding the ‘TTP’

CTI referred N1788 to the part of his witness statement that addressed the concerns raised by N1466 about Sub-Unit 1’s (“SU1”) operations in Afghanistan (page 8, paragraph 17). N1788 confirmed that he first became aware of N1466’s concerns about the operations in early April 2011 when N1466 asked him to carry out an informal, statistical review of recent operations. In the weekly Ops briefings, there would have been discussions about specific operations, this happened all the time. N1788 was sure there were discussions about specific operations. N1788 was also sure that there was interaction about it being a very kinetic period “*but in terms of a specific concern over trends, over something the provenance of which I might not be aware of, it was [N1466’s] tasking of us to do that work that was the start point of it, yes.*” N1788 also thought that by this point everyone was aware that some of the Afghan Partner Units (“APUs”) were becoming reluctant to go on operations with SU1. This became a major issue for campaigns in respect of operations across the whole of ISAF. In so far as it pertained to UKSF operations, this disquiet amongst the APUs and their reluctance to go on operations was a problem which fell within his portfolio. N1788 explained that it was difficult to know what came first, but President Karzai was very “*muscular*” in addressing the issue of DDOs with NATO’s Chain of Command. The APU disquiet was also occurring at the same time as President Obama had surged additional troops to try and deal with the insurgency, so it was a known issue and a big deal. It was probably both that ACOS Ops or DSF asked him to look at this issue, and that he identified it himself. It was impossible not to be aware of the general context within theatre if you had access to the kind of data they had.

N1788 explained that N1466’s concerns were first described to him as “*evidence of inefficient practice*” but that it had an impact on the Afghan partners because the inefficient practice was linked to highly kinetic activity on target, particularly where they were not directly involved, had a different view or were under pressure from their Chain of Command. In response to a question from the Chair, N1788 explained that he understood ‘*evidence of inefficient practice*’ to be the use of “*a TTP that was designed to reduce the threat to both us and reduce collateral and the risk to civilians on target... The way that TTP was being used now in [N1466’s] mind directly increased the propensity of kinetic activity to occur on target and, therefore, that made it inefficient, ineffective, or perhaps undermining the very reason it was designed for in the first place, which was to de-escalate, not escalate.*” That was what N1788 understood he was being tasked to look at by N1466.

N1788 could not remember the date on which the ‘*particularly kinetic period*’ was identified but thought it would have been approximately the period of time that N1466 asked him to look at, around March-April 2011. It was a quick process between this being identified and N1788 going out to conduct the TTP Review. N1788 clarified that kinetic activity itself was never a concern. It was the association with inefficient practice and the knock-on effect for the Afghan partners.

February 2011 email chain relating to the OPSUM for Objective TYBURN

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CTI referred N1788 to an email exchange sent between the Chief of Staff, N2252, and SO1 Legal, N2108, in regards the Storyboard and OPSUM for Objective TYBURN which had been distributed on 16 February 2011. N2252 emailed N2108 ‘4 EKIA - 2 weapons recovered. Worth a look?’ (MOD-198-0003490-A). In N2108’s response, he said that he shared ‘DSF’s concern about the recent spate of high EKIA’ (MOD-198-0003490-A). N2252 then emailed the Military Advisor to DSF, copying in N2108, requesting a chat with DSF as N2252 thought DSF may want to discuss it with the Commanding Officer SFHQ(A), N1786. N1788 was not copied into these emails and had never seen them before. N1788 confirmed that in normal circumstances he would have expected concerns about kinetic activity in theatre and ‘*inefficient practice over the TTP*’ to have been brought to his attention, but it depended on the provenance of how the information about ‘*DSF’s concerns*’ came to N2108. He imagined there would have been discussions, certainly on the Operations floorplate. If there were concerns about kinetic activity and inefficient practice, he, someone in the Campaigns Team, or ACOS Ops directly, would have been tasked to look into it.

N1788 did not know what the reason was for the six week or so gap between concerns about the TTP being raised in mid-February and the TTP Review being carried out in April 2011. N1788 did not know for sure but he would have thought Commander SFHQ(A) and DSF would be discussing this. N1788 agreed that ultimately it would have been the Campaigns Team that would be tasked to carry out an examination of this sort of problem.

March 2011 email chain relating to the OPSUM for Objective PPP

N1788 was referred to a series of emails from March 2011 regarding allegations against SFHQ(A) in respect of several operations to which N1788 was copied (MOD-198-0000239A). N1788 confirmed that he was the individual named in the email from N889 to N1466 and N2444.

N1788 vaguely remembered the details of Objective PPP, a non-DDO in which women and children were killed and wounded. N1788 explained that where there were civilian casualties, such as Objective PPP, he would be responsible for the management of process and ensuring that N889 had completed all the necessary in-theatre activity. When a problem arose, N1788 confirmed he would, in his capacity as SO1 J35 Campaigns, be involved to ensure the right things were being done and that all relevant people were informed. N1788 considered it highly probable that the same would happen in respect of a problem on a DDO, as it would for a non-DDO.

N1788 could recall hearing, either from N1791 or as hearsay, of an occasion in which tempers got so frayed in discussion about a DDO that a pistol was pulled by an Afghan Partner Unit on one of the UKSF mentors during a meeting in theatre. N1788 thought he heard about that information during the TTP Review and associated that “*bit of information*” with that time.

When asked whether someone had explained the totality of the issue or whether it was just clear what was happening, N1788 said “*we all had enough intuitive understanding of the campaign and certainly, you know, I’d been there not a year before that I understood intuitively what the issues might be.*”

- Q And did you appreciate from looking at the operational staff work that came back that the TTP as had been used by you when you had [held a Sub-Unit command appointment] had changed somewhat?*
- A Yes, I think that is fair, although we had a saying in the, in the Campaigns Team, you know, nothing is ever as it first seems, so don't prejudge. Over the course of time I think it's fair to say that I had concerns about where, how the TTP had evolved, yes.*
- Q And when you say "over the course of time" you had concerns, was that after it was first brought to your attention and during the currency of your initial review and then the TTP Review or had concerns arisen in your mind before then?*
- A No, I imagine, you know, as part of daily ops [briefing], the interaction with ACOS Ops, the team, there would have been questions arisen before that, but on a case by case basis rather than on a systemic basis.*
- Q But if on a case by case basis questions had arisen about an ineffective or inefficient TTP, because you, using your previous experience, had recognised "This wasn't how we did it and it seems that it has ended up with people dying", do you think on a case by case basis it might become a systemic problem if you see the same problem occurring on TTP, sorry on DDO after DDO?*
- A I think over, over time, yes, and I think that's precisely what did happen, but I think you have to, you know, you have to exhaust the command, the Chain of Command's view of this first before you then start applying a rear base solution to it. So, going back to my previous statement about, you know, you just need to be careful how you judge things, I think you've got to collect the data first and give the Chain of Command the opportunity to do its job.*
- Q Just making sure then that I have understood this...you, on a case by case basis, had appreciated that the TTP had changed and led to kinetic results, is that fair?*
- A As I understood it through the prism of what were, again being slightly honest not, not the most well-written of operational reports, so one has to be careful when one, when one views it just through the prism of an operational report.*
- Q But this is something that was on your radar even before [N1466] asked you to look at it?*
- A Yes, it would have been, yes.*
- Q Right, so you were alive to the problem and, when [N1466] came to speak to you about the problem, there was a moment when you joined the dots and realised that you and he were on the same page?*
- A Yes, I think that's fair. I mean, it wouldn't have been a, I don't think it would have been a massive revelation but it certainly would have been a point at which, you know, we were, we had gone from, "Okay this, this looks like something we need to be concerned about or reviewing or doing something about potentially" to "Now I want you to do something about it", yes.*
- Q When you said "This looks like something we need to be [doing something] about or [we need to be] reviewing", when you say "we" is that you and your team were having an eye to these metrics to see what you needed to do about it or had there already been discussions escalated up the Chain of Command?*

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A *So I don't think there had been, well I don't know whether there had been discussions escalated up the Chain of Command. I wasn't privy to any discussions, for example, between ACOS Ops and DSF on this, but it would have been a gradual process, a compound process and I would just offer that um distilled like this you can go "Well, here is, here is the, the trajectory to the TTP Review", but in between each example where you might think "Is a TTP review right", there would have been three or four other operations where there would not be any concern. So it is not quite as linear or precipitous as one might think.*

April 2011 emails regarding Objective 10

N1788 was then referred to an email from N2108 to him and N2444, sent on 4 April 2011 (MOD-221-0005163-A), which forwarded on the post-operational staff work for Objective 10 and asked whether the Sub-Unit had reviewed the efficacy of the TTP (MOD-221-0001776-A). The concern raised by N2108 in this email chimed with a concern N1788 already had in his own mind. N1788 agreed this was a classic example of where there was a question mark as to what happened on a DDO and it was brought to his attention because the management of this was his responsibility.

N1788 responded to this email shortly after, writing back *'I acknowledge your concern. Clearly, we need to be careful in questioning tactical actions in which we were not involved ...'* (MOD-221-0005163-A). N1788 agreed that N2108 was not telling him anything he did not already know, and that he was already questioning the tactical actions of the Sub-Unit.

N1788 thought the TTP of sending someone back in restrained, normally with plasticuffs, evolved in another UKSF operational theatre outside Afghanistan. In terms of whether that TTP involved the individual being escorted, N1788 explained that the previous TTP involved the *"head of the household"*, or Afghan male willing to take responsibility for the compound, making sure all the women and children were out and confirming no one was left inside. The Afghan male would go in and be covered by members of SU1. An interpreter or member of the Afghan Partner Unit would then communicate with the individual. The individual would then be removed from the building prior to Sensitive Site Exploitation ("SSE") being conducted by the Sub-Unit. N1788 agreed that generally speaking the individual would be restrained inside the compound and buildings so hopefully they could not pick anything up.

When questioned about the efficiency of this as a tactic, N1788 argued that, through the prism of his experience, it was not efficient to send an unrestrained male out of sight into a building, but as insurgencies develop and priorities change, the prime factor in a successful DDO will change over time. One of the things that became clear to N1788 when he conducted the TTP Review was the amount of time that the DDO was taking, particularly with ever-expanding compound searches. *"If you suddenly decided that time was of the essence, it might be that you did things differently in order to speed things up"*. This was why SU1A told N1788 that they were changing things at the time, however N1788 still had his own view about the balance of benefit there. N1788 explained that his point to N2108 was that *'you've got to be careful, you know, you don't have all the facts here, I acknowledge your concern, got it, but we need to make sure we go to theatre, you know, we go to the people who are conducting this and ask*

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them why they are doing it this way.' N1788 assumed that given the concern on a case by case basis, someone would have got in contact to check why the TTP was being used in that way, leading to inefficient results. N1788 assumed that conversations took place at least at the Staff Officer level to their Ops team rather than the Commanders themselves. Those conversations would have been face to face during the TTP Review.

N1788 confirmed that to enquire about this particular TTP, the place he would go to would be the relevant Staff Officer in theatre, and there would be emails or phone calls between them when this issue would have been raised. N1788 explained that the people who wrote the OPSUMs, in SFHQ(A) were not the same people on the ground conducting the operations. The concerns would have been raised through the operational staff, not the Commanders themselves, such as through N889, via email or phone calls. N1788 could not recall anyone he spoke to in theatre about his concerns, nor whether he raised the question of the TTP and kinetic activity.

N1788 explained that he thought there was a difference between *"saying "Hey, this seems to be trending one way, you know, are you sure everything's okay here?" and saying to a [Sub-Unit] member on the ground at the time "I think what you are doing is necessarily wrong".*" N1788's recollection was that he would have likely contacted Staff Officers in Afghanistan to raise the trend in kinetic activity associated with the particular TTP and the amount of effort in the way OPSUMs were being written. *"They were void of the detail required to fully understand what was going on, in my opinion"*. N1788 explained that the TTP had evolved and whilst it had elements that were similar, in that it involved a call out and *"using Afghan people to make sure things were cleared, but it wasn't the same TTP that I recognised"*. N1788 confirmed that unless there was very specific intelligence in respect of an Afghan male, restraints were used because UKSF were sending someone back into the building with no information as to who they were or what their involvement in the insurgency was. N1788 confirmed that it would be hard to make out the features of individuals in the compound during a DDO, especially without photographs of the people to identify them, so when a male was sent back into the building he could do anything he wanted such as arm an IED, set off a suicide vest or pick up a long-barreled weapon, for example an AK47, or a grenade.

Q ... if you send a male back inside the building when he disappears from sight and is unrestrained, is there a risk that you cede advantage to the enemy in those circumstances?

A I think there is a risk and I also think it is fair to say, you know, one of my concerns was "You're losing an element of control". Of course you will lose some of that control even in the original TTP, but you are losing an element of control of someone that, you know, you have taken into your custody. So, so yes. Now, whether that's ceding an advantage to the enemy or not depends on the circumstances, but you could be.

Q I mean, if it turns out that the person that you have sent back inside is in fact a member of the insurgency and knows there is a weapon within the compound that he can get access to, the danger is, as described in a number of these DDO reports, that that person picks up the weapon and tries to use it?

A Agreed.

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Q And, if they are faster and more effective than those that we have read the examples of, they might end up wounding or, worse, killing a member of the call sign.

A Correct and in some of the examples that, you know, were part of the evidence pack, I think they hadn't managed to kill anyone but they've certainly managed to get shots off or throw a grenade, yes.

N1788 explained that he was surprised that the Officer Commanding (“OC”) at the time allowed a TTP to evolve in such a way that members of his Sub-Unit were either fired upon or had to dive out of the way of grenades. However, “...we were very careful not to judge what could be an evolution of the insurgency itself from 4,000 miles away, which in many ways the TTP Review going forward to speak to these people was so important and the factors that they used to judge the efficacy or how the TTP should evolve or their tactics on the ground had evolved.” N1788 then gave an example from his experience of occasions during operations when a certain aspect of the compound clearance had been inefficient, resulting in very violent opposition in almost every case.

N1788 confirmed he made enquiries about the circumstances of some of these operations through the Staff Officers in theatre and that the replies from the Operational Staff were that they thought what they were doing was efficient. N1788 considered the conversations he had with Operational Staff were different to those he would have had with an OC, whom N1788 did not think he had spoken to by this point. N1788 thought that by this stage, those in the operations team at HQ DSF, including N1466, reached the point of approaching the Commanders such as N1786 and N1802, precipitating the TTP Review. Around 4 April 2011 or thereabouts, N1788 recalled N1466 coming to him to request a review of the TTP. When he gave N1788 the Terms of References (“ToRs”) for the TTP Review, it was clear that N1466 had had conversations with N1802. However, N1788 did not remember the degree to which the issues were ever discussed with N1802.

N1788 did not think it credible that N2108 would not have had a conversation with N1466 about his concerns before sending the email to N1788. Accordingly, N1788 did not raise N1802's knowledge of the concerns or that he had discussed the issue with N1466 in his reply to N2108. N1788 could not remember the specific way in which this issue would have been discussed beforehand, but N1788 thought that this would not have been the first time N2108 would have heard this. N1788 wanted to be clear that “*the way the Headquarters works is marinating in information, having sidebar chats, flat and fast*”. The email from N2108 may have been the first time he brought it to N1788's attention, but he did not think so. N1788 said it would not have been abnormal to put something in an email this way even if it had been discussed previously, particularly if you were trying to bring other people in.

N1788 said he wrote in his response to N2108 that intervention should only take place ‘*in extremis*’ because ‘*there are many reasons why all the facts are not available to us from the way an OPSUM is written*’. They would have to be really clear about why the OC's approach was not reasonable. Although N1802 retained the right to intervene, it should not be done in a “*cavalier way that undermines the command responsibility*” of Commander SFHQ(A) or OC SU1A unless there was specific evidence and a clear reason to do so. N1788 thought it would have been odd

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for him to go straight to N1802 after this email exchange because ACOS Ops was copied in and they would have discussed the issue.

N1788 could not remember the specifics of the comparison between SFHQ(A) killed in action (“KIA”) stats and Partner Force 1’s (“PF1”) mentioned in his email but thought that N1802, during a briefing, had asked something like how they compared. N1788 did not think a disparity in the KIA stats between UKSF and PF1 alone would have justified an intervention; there were too many other factors involved and context – which he thought was missing at this stage – was everything. N1788 agreed this was a continuation of DSF’s enquiry and concern shared with N2252 back in mid-February 2011. N1788 did not think it was fair to say that N1802 was unlikely to have raised a concern unless he regarded it as sufficiently serious, “*Musing happens all the time in the military and is often the cause of unintended consequences, so I don’t think that is the case... very often people think out loud, discuss things, “What do you think of this?” without it becoming a concern that you would want to intervene in until you have got more information*”. N1788 recalled that N1802 “*mused all the time*”.

April 2011 email from N1803 concerning Objective 10

CTI referred N1788 to an email chain sent by N1803 to N1788, copying in N1466 and N2108, on 4 April 2011 at 13:35 (MOD-198-0003470-A). The chain started with the same OPSUM and Storyboard in respect of Obj 10 and N1803’s email included the text ‘*First time for a while I’ve seen the ‘ask B to go back in to help clear and end up killing him’ routine*’.

Q ... when [N1803] writes “‘ask B to go back in to help clear and end up killing him’ routine”, was there a “routine” where males were being asked to go back in to help clear and ending up being shot dead?

A No, there was certainly, well not that I was, I certainly don’t recall any “routine”. I think, again I don’t want to speak on behalf of [N1803], but I think that’s a turn of phrase. Seeing that again, I hope I’m remembering right, but seeing that I think she’s asking has there been a deliberate pause in that evolution of the TTP that we, you know, all used to use, the one I originally described to you, because she hasn’t seen this occur, i.e., EKIA under what you might call the new TTP or the amended TTP for a while. I think that’s what she’s asking.

N1788 agreed that this email was not in response to anything sent by N2108. N1803 was separately raising a concern about the same DDO as N2108. However, N1788 had no doubt that the first person N1803 would have discussed her concerns with would have been N2108 and vice versa because that was the relationship between Policy and Legal. N1788 did not know whether N1803 would have been questioning the propriety of what had taken place by using the word ‘*routine*’. N1788 confirmed that N1803 appeared to be questioning what had gone on during this particular DDO. Although N1788 did not agree that N1803 was expressing possible disbelief in her email, he could see how it could be interpreted tonally in that way. N1788 confirmed that this was a DDO where two people were used as separate parts of the clearance and ended up dead after picking up an AK47 and a grenade.

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Q And, when we think about the efficiency or the efficacy of what took place on that particular DDO, are you surprised that two bravos were able not only to pick up an AK47 and to aim it at the call sign but also to pick up a grenade and prime it?

A So I personally, and I just want to be really clear that I want to be careful about applying my tactical judgements to a situation that I wasn't in, but personally the way I approached that TTP was to try and make those sorts of possibilities as minimal as possible, yes.

Q At a fundamental level, the last thing you want is either members of your [Sub-Unit] shot at or blown up?

A Correct.

N1788 could not remember the specifics of the 'serious concerns' referenced in N1803's email that led to the deliberate pause in the use of this TTP but thought it might have been to do with the number of EKIA or the kinetic nature of the targets. N1788 did not know whether there was a pause put on the TTP in the run up to the review. CTI referred N1788 to an email sent by N2108 to N1803 at 13:37 saying 'FYI attached' to which N1803 replied 'great minds and all that'. N1788 could not say for certain whether he thought this meant N1803 and N2108 were raising the concerns separately or whether they had had a conversation together before raising it by email.

N1788 explained that the process of raising legal concerns was collaborative and that "lawyers were always involved in our business". N1788 was aware of N2108's general observations on this issue regardless of it being put in an email, and the fact it was put in an email was less important than it might suggest. N1788 could not say for sure whether, at this stage, Commander SFHQ(A) and N1802 were already having these conversations that N1788 was not privy to. N1788 said that if the LEGAD and POLAD were flagging identical problems they would have had follow-up discussions with N1466 and it would have been one of the factors that resulted in the review of the TTP.

CTI queried why N1788 did not make any mention in his witness statement about the concerns he had independently following his review of the operational staff work, or the discussions he had with N1466 about the TTP and kinetic activity. N1788 did not think he and N1466 had ever shared emails about these concerns, and the discussions would have been proximate to N1466 formally tasking him. N1788 agreed that he had harboured concerns for weeks and during that time he imagined he would have spoken to Staff Officers in theatre to see if they could explain why his concerns were not relevant. N1788 agreed that the Staff Officers in theatre did not satisfy his concerns because in early April when he was approached to carry out the review, he still had them. N1788 was not discussing the concerns with anyone outside of his team or the Staff Officers in Afghanistan, apart from N1466. N1788 thought there was a difference between saying an APU had concerns about the operations and N1788 saying he was genuinely concerned about a trend that required immediate action, but it was building towards a situation. The review of the TTP was precipitated when these concerns came together with N1466's concerns coming from other areas of UKSF which N1788 was not aware of. N1788 thought there was a discussion amongst ACOSs, including ACOS Pol and ACOS Ops, and perhaps with COS, maybe two or three days before N1466 came to N1788.

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When N1466 asked N1788 to complete the review, N1788 doubted whether he would have said to N1466 that he had been worried about the TTP for a number of weeks as the “*collaborative nature*” of Headquarters meant N1466 would already have been aware of that. N1466 had told N1788 that he was concerned with how the TTP had evolved and asked N1788’s views of it based on N1788’s prior experience in an in-theatre command position. N1466 was interested in N1788’s opinion as to whether it was a good idea to allow Afghan males to go back into the compound unrestrained, the APU response, and if it was likely to have raised concerns about the number of EKIA versus the number of weapons recovered.

Q Did he raise with you any concern about the number of EKIA versus the number of weapons recovered?

A I’m sure that would have been included in the conversation. It was always a metric that was examined in the OPSUMs, but in and of itself was not an indicator of poor practice and, I think by the time we had got to here, a number of different metrics were being conflated, if I’m honest, from let’s say in which cases was a bravo sent back in and ended up posing a threat to a [Sub-Unit] member and was then engaged, killed or disabled through to things like numbers of weapons versus EKIA, and they weren’t necessarily the same thing.

Q In terms of the development or the evolution of the TTP, if on a number of occasions an unrestrained male or males either has or have been able to pick up weapons and to try to engage the [Sub-Unit] with those munitions, would you have thought that those in theatre who were in charge of what was happening might have changed the evolution of the TTP to avoid that situation happening again?

A It’s something I’d discussed, I’m sure I discussed with them during the TTP Review, which was um you know “What is so important about doing things this way that you’re willing to take on the disadvantages that it might precipitate?” And, at the very, you know, even at the, you know, the very lowest level, I would say we’re a learning organisation and we need to learn from this.

Q Did the learning in theatre appear to be happening as fast as it needed to?

A Again, I’m being careful because I wasn’t in the tactical situation, but I, I’m pretty sure I felt it wasn’t.

N1788 confirmed that the “*review of trends and statistics*” he was asked to undertake was the conflation of the use of the TTP which resulted in EKIA as well as question marks over the number of weapons versus number of deceased. During this review, N1788 was sure he had discussed his concern over the number of occasions an unrestrained male was able to pick up a weapon to engage the Sub-Unit.

N1788 confirmed that Afghan males detained were in the custody of UKSF and there was a duty of care owed to them, and that when UKSF lost control of them leading to kinetic engagement, they were being killed whilst still in the care of UKSF. N1788 explained that he raised that point in his TTP Review and that that was also problematic for APU1. However, N1788 had also said that “*one can’t second-guess the tactical situation people were in*”. Even if the Sub-Unit precipitated the situation in which an Afghan male could force a kinetic

engagement, this did not “*obviate or remove an individual’s inalienable right to self-defence*”.

Q ...Is there possibly a wider political problem here, in that when you are trying to win the hearts and minds in a counter-insurgency operation, if you end up killing people in circumstances where they might not have needed to have been killed had it been done differently, do you think there is a danger that the population turns against the Army that they see that is supposed to be looking after them?

A Yes, that was undoubtedly one of the factors of concern that we dealt with during the TTP Review, so yes.

Q ...one of the dangers might be that those people who have a more frequent day to day contact with the local population, the regular Green Army rather than UKSF, the anger of the population is turned on the regular Green Army because they are there to be seen in a day-time patrol?

A Agreed. The pressure of Special Forces’ operations or the consequence of them, regardless of who was committing the, you know, who was executing them wherever in Afghanistan... from my perspective normally fell most squarely on what we describe as the battlespace owners because they had to deal with, you know, the consequences of it. Having said that, the battlespace owners were also the people who were most exposed to the risks that these insurgent cells were posing, so it’s, it’s an interesting balance here because removing insurgent cells that lay IEDs and kill British coalition Afghan soldiers is precisely the point of these operations in the first place, but that’s the whole, that is the exquisite difficulty of a counter-insurgency operation.

Q And that of course assumes that ultimately the people that end up being killed on the DDOs are the targets of the DDO and that the insurgency were involved in the laying of the IEDs.

A Correct and, you know, you’ve asked me about some of the why I am careful in my email to say “Can we be careful about the tactical situation here”, because [post-operations would be a time to examine whether operations had been successful or not]. Normally you would very quickly know whether you had got something wrong, caused CIVCAS or killed, detained, disrupted an insurgent cell and actually, you know, from the Operational SUMs and reporting of many of the DDOs that we have questioned here, um they almost always point to a disruption against an insurgency... So there is just some context to why I keep talking about this tactical empathy.

When N1466 approached N1788 to carry out this piece of work, the two of them had discussed their shared concern on a number of occasions. N1788 did not think N1466 had set the parameters as to how he was to go about the task. He thought N1466 gave a timeframe of the last six months as that normally related to a specific tour of duty for a Sub-Unit. N1788 confirmed that he was asked to examine several factors including the instances where the TTP of sending a male back inside had resulted in that individual being killed and where the number of EKIA was larger than the number of weapons recovered. N1788 could not recall off the top of his head what other factors were relevant. N1788 did not think terms of reference were necessary for the review of the trends and statistics as it was normal activity for a staff branch

at a Headquarters. N1788 did not discuss this initial review with anyone such as N1803 or N2108 as he would not have had a reason to do so, and the only other person involved in the informal review of statistics was N2444. N1788 thought it was fair to conclude that, at the time of emails shared between N1803 and N2108, he was unlikely to have been tasked to do this initial review because there was no mention of it, but N1788 could not remember the specific date on which he was asked to do the review. N1788 did not think it was prudent to identify the specifics of the POLAD and LEGAD's concerns when he was embarking on the initial review, not until he returned the data to N1466. N1788 could not be sure as to why he engaged N2444 on this task at the time but it was probably a division of labour consideration, and N1788 would definitely have reviewed it before sending it to N1466.

It was clear N1466 wanted to drive this as an issue. It was unlikely that N1466 set a specific time frame for completion of the review but it would have likely been expected within the day. N1788 confirmed that he had been concerned about the TTP himself, he discussed those concerns with N2444, N1803, N2108 and N1466, aired his concerns in theatre, and was aware that N1802 had these issues on his radar.

Q At any stage did the concern leave the question of numbers of metrics and become a concern about the propriety of what was taking place on a DDO?

A No, I'm really clear about that. That was, that wasn't discussed. That didn't mean that there wasn't a moral element to making, you know, to amending the TTP when someone is in your custody and putting them back in harm's way, but in terms of propriety, there was nothing to suggest that people weren't acting through their inalienable rights to self-defence.

Q The moral element is what, please, Sir?

A So someone is in your custody. You put them, you then lose control of them. They then yes, under their own free will, pose a threat to you, but that could have been unnecessary.

Q In the circumstances that we have just looked at, for example the [Obj 10] DDO, had those two individuals been restrained in the way that you had conducted the DDOs under your TTP, they would have been simply incapable of arming themselves with an AK47 or with a grenade.

A Not incapable, but, well not incapable without doing something first. So, you know, they could have, [managed to get out of their plasticuffs], but the thing about how we had constructed the TTP was that, if they were do that, and it did occasionally happen, it did happen, it wasn't, you know, this wasn't unheard of, you would, you would be in the position of tactical advantage. From the [access point], they would have to make their intentions quite clear and then you could react appropriately.

Q I mean, if somebody in plasticuffs is attempting to [physically get out of plasticuffs in some way], that is what you mean by making their intentions quite clear?

A No, I mean, you go [back into] a house. You, so you're out of sight to the [Sub-Unit], you then do that and then you come out with your weapon that you've stashed wherever it might be and you engage the enemy or you don't come out at all and you then force the [Sub-Unit] to clear the compound and then there's a gun fired.

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Q I mean, the reality of the position from a moral standpoint is that the TTP had evolved, if it had done in this way, to such an extent that Afghan nationals were ending up being killed in circumstances which were avoidable. Is that a fair way of putting it?

A Again, so I think some of the details of the tactical engagements are not well described in the OPSUMs and, when you go into theatre and you talk to the soldiers concerned, it makes more sense, but in some of the cases I would concur and say that was one of my concerns and I was definitely concerned that we were losing, you know, from a both professional perspective, from a reputational perspective, we were losing control of someone who we had once had custody of, yes.

In response to a question from the Chair, N1788 described the first review as “normal” in so far as statistical analysis was normal business activity but that the Review itself was not normal.

N1788 was referred to the product of N2444’s review, an email from N2444 to N1788 dated 7 April 2011 and timed at 16:45 (MOD-198-0000334-A). N1788 could not recall there being a time cap for completing the activity and N1466 had not indicated any sense of urgency or pressing need to resolve this quickly. When N1788 was given the TTP ToRs, N1802 made it clear his intent to try and get everything done prior to the next rotation of Sub-Unit 1. N1788 did not think he also received all of the OPSUMs when he received N2444’s email. N1788 had access to the OPSUMs and could have looked at any of them had he wanted to.

CTI referred to the OPSUM for Objective 9 from 14 March 2011 (MOD-198-0003553-A) as N2444 had stated that it ‘does not read well’. N1788 confirmed that it would have been much harder for the Afghan male to have armed himself if he had been plasticcuffed, although there was a way to get out of them.

Q ... Did you come across lots of people in your compound clearances who were [escaping] out of plasticuffs?

A Er no.

Q Right. How many times did it happen during the course of the DDOs that you conducted?

A Um I’m, I’m not, maybe once, but I’m not aware of very often at all.

Q Right. I mean, it certainly didn’t happen sufficiently that you had to reconsider the use of plasticuffs rather than ----

A No.

Q I mean, of course, had it happened sufficiently often, the trick would be to use two sets of plasticuffs because it would be twice as hard?

A Er yes or, or some other form of restraint, yeah, agreed. Sorry, I’m not being an apologist for this ----

N1788 agreed that the use of the TTP which ended in avoidable consequences was the entry in the OPSUM (MOD-221-0001793-A, p.4) which stated ‘Two Bs are sent to pull down the curtains and open the doors. As they enter the building they move into fire positions and attempt to engage the call signs in the courtyard with one AK47. They pose an immediate threat and are engaged...A further B...immediately grasps the downed AK47 and moves to engage the call

signs in the courtyard. He poses an immediate threat and is engaged...'. N1788 agreed that the next entry in the OPSUM which stated 'Call Signs move into Compound 68, on entry they are confronted by a further armed B...' was the Call Sign being surprised by people inside. N1788 was referred to an earlier entry in the OPSUM on p.3 which stated 'One B is escorted into the main building to assist with the clearance. After entering the third room he runs off...attempts to engage the call sign....he is engaged...'. N1788 confirmed that after this kinetic engagement earlier in the operation due to the TTP not working and someone being killed, the guesthouse and compound posed a real risk to the call sign. N1788 agreed that it was a possibility to have used another method of securing the compound rather than using the call sign or individual Sub-Unit members. N1788 was not necessarily surprised that within a period of time a male had been sent back into one building and ended up being shot and then precisely the same TTP is used again with exactly the same results some time later. N1788 explained that applying the tactics is not necessarily the surprising element, but that in such a fortified compound in a Taliban dominated area, one might want to be more cautious on the use of the evolved TTP. N1788 thought the time and the size of the compound would have also been on the Commander's mind. N1788 agreed there was not the same time pressure at this point in the operation.

CTI then asked N1788 about the entry in the OPSUM (MOD-221-0001793-A p.4) which recorded that an Afghan male, previously squatting by the building, grasped the downed AK47, moved to engage the call sign and was killed.

Q I mean, the chances of him getting the better of anyone, whether it was SF or not, because he has just watched two people shot in front of him, he has picked up, or tried to pick up a weapon, he is inevitably going to be shot and killed.

A Yeah, I think that's, I mean, you'd have to be either naïve or stupid not to believe so, but this is a group of people who also strap suicide vests to themselves and blow themselves up, so I'm just saying to see them purely through the prism of our understanding isn't necessarily right, but I would agree he would, his, unless he was very stupid, his own interpretation of his likelihood of survival must have been very small.

Q There is of course a difference between attempting to pick up an AK47 and strapping a suicide vest to yourself. The former, the chances of you getting off a shot before you are killed are almost non-existent, whereas in the latter you take people by surprise, they have no idea that you are coming and, whilst you will die in the explosion, others will die with you.

A I agree up to a point on that, Mr Glasgow. What I would, all I would say is, you know, [the] Sergeant Major used to have a saying with me, he would say "Never underestimate the illogicality or stupidity of an insurgent; they work under different logic to you or I". I'm not for one moment trying to put myself in his mind. I don't know what was going through his mind. I'm just saying I have approached people with suicide vests who have blown themselves up who have had no chance of killing me when they have blown themselves up. So I'm just giving some balance to this argument.

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N1788 agreed that during the operation the two individuals tried to engage the Sub-Unit where the odds were hopelessly stacked against them. N1788 agreed that Obj 9 was one of the OPSUMs which might gain the attention of anyone that shared his concerns.

CTI referred N1788 back to N2444's email dated 7 April 2011 which provided a breakdown of the kinetic activity across the DDOs (MOD-198-0000334-A). N1788 thought N2444 must have been asked to look at the specific metric of number of EKIA versus number of detainees taken based on the text in his email. In respect of N2444's email where he wrote of '*the number of [weapons] apparently found on target*' and those '*multitude of reasons*', N1788 explained that N2444's use of '*apparently*' could have referred to the post-incident procedure after kinetic engagements where some weapons might not have been accrued in one spot and taken off target due to SSE. Another reason for use of the word '*apparently*' to describe the weapons being located later could be that the weapons were dropped down a gully and UKSF could not have seen or got to them.

Q I mean, in so far as the collation of evidence is concerned, which was one of the intentions behind a DDO, because without evidence prosecutions would be impossible

A Yeah.

Q -- would there not be a need, as far as can happen, leaving the time pressure to one side, would there not be a need for accurate recording of weaponry so that, if someone had a weapon, there was a photograph of it?

A There should have been, yes, but in a very kinetic engagement where, let us say, you know, three Taliban are manning a position and you would get into a fire fight with them and you kill all three, that wouldn't, I think there would have been less emphasis on collating the evidence behind that because de facto you have had an engagement with them and they are dead. I'm not saying that's right or wrong, but in the minds of the [Sub-Unit] that might have been it. Again, I'm not saying that's what happened here, I'm just giving you some of those reasons that [N2444] refers to.

In circumstances where those killed were not in fact insurgents, N1788 agreed that photographs would be particularly desirable, particularly for Afghan Partner Units.

Q What if there are complaints that the people who are being engaged and killed are not in fact insurgents? Would there not then in those circumstances be a need, where possible, to photograph those people who had weapons so that the simple answer could be "There they are with the weapon they had"?

A I agree and particularly important for our Afghan partners and occasionally, just to add colour here, that was occasionally the problem. They would want to, they would sort of tidy up the battlefield sometimes for their own pictures, because it had to go through their judicial process, and that sometimes complicated matters.

Q When you say "they would ... tidy up the battlefield", is this something that happened on your DDOs?

A Certainly when they were, when they took their evidence, because they had recourse to take pictures which went up their own Chain of Command, they would move, firstly they tended to take all the bodies and lay them all next to one another. They would then

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perform the Islamic rights, bind their heads facing towards Mecca and lay their weapons next to them, which weren't always the right weapon with the right person, so yes, that did happen.

Q So presumably the photos that were taken on the DDOs that you were engaged in, when that SSE took place, those photographs as best as possible accurately recorded the way in which a body lay at the time of death?

A So are you talking about the Afghan photos?

Q No, your photos.

A Our photos should have done, yes.

Q Right, so there would not be, so far as your photos were concerned, bodies and weapons moved for the purposes of the photograph. If that happened, it was the Afghans that did it for their photographs?

A Correct, yes.

N1788 was then referred to N2444's summary of the DDO statistics (MOD-198-0000334-A). He explained that N2444 may have described including grenades as a weapon as 'controversial' because of the degree to which someone would effectively be committing suicide by using a grenade as, due to the delay on a grenade, they would likely be shot on throwing it. N1788 explained that he sat next to N2444 as the report was compiled but could not remember whether he was shown specific OPSUMs.

N1788 then explained that the SFHQ(A) Incident Tracker referred to in N2444's report was a spreadsheet for examining procedures in HQ DSF rather than going through the OPSUMs. N1788 could not recall whether it included the number of EKIA on a particular DDO, in all likelihood it did, but N1788 had not seen it for 14 years. The 'we' who started the Tracker in N2444's report would have started with Campaigns and proliferated to other areas. N1788 confirmed that he shared the 'informal opinion' of N2444 that there had been a different approach that was leading to increased accusations and Serious Incident Reports ("SIRs") since Sub-Unit 1C deployed. N1788 considered the Tracker to have been put in place in September 2010 as a data management tool and confirmed that it saved a significant amount of time to work out what number accusation each one was. N1788 thought his 'informal opinion' would likely have grown in strength on reviewing the OPSUMs and having the Tracker information available. N1788 explained that the 'informal opinion' he shared with N2444 was that kinetic actions were going up which he believed was happening across all Sub-Units in Afghanistan and not just British ones. N1788 cautioned against generalising from the language used by N2444 and highlighted that there was a gap of a few months between Sub-Unit 1C deploying and the Tracker starting. N1788 agreed that the number of incidents in the Tracker was an unusually high number.

As to the final point in N2444's entry that two operations caused the most angst with the APU, N1788 explained that the 'Afghan conscience' being a 'useful yardstick' meant that where there had been no complaints through the Afghan network, it usually meant it had been a "good hard fight". N1788 thought an approach looking at incidents that had caused concern to the APU as well as the "more bodies than weapons" scenarios was reasonable, although N1788 thought it could pull up several incidents that had nothing to do with the specific concern. N1788 then gave

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Objective TURTON as an example of a DDO where he was not sure if anyone had died, but it caused “*angst for the APU*” as one of the detainees was said to be a relative of one of the APU members.

N1788 thought that by ‘*warning*’, N2444 was referring to the issue that collating examples of incidents where something had gone wrong predisposed the reader to a negative interpretation. N1788 agreed that nonetheless he was already concerned about the results and that this was a concern shared with N2444, N1466 and N2108. N1788 thought N1802 probably also knew of these concerns.

N1788 was asked whether the comment that ‘*there is enough here to convince me that we are getting some things wrong right now*’ was a stark warning from N2444, and replied that he thought it was a fair analysis of the situation which he agreed with. N1788 also agreed that the statistics were concerning and that there were no grounds to tell N1466 that his concerns were misplaced.

Q Right, and at any stage was your concern a question of the legality of what was taking place?

A No because none of the data we had been given provided evidence that supported illegal activity. It painted a picture in which we felt, or I certainly felt, that the [SU] had evolved a TTP that was now much less fit for purpose than it originally was. There was no evidence to say that anything nefarious was going on, but inefficient, yes, in my opinion.

N1788 agreed that the way to resolve this would be for it to go to the Chain of Command down through CO SFHQ(A) to the OC of the Sub-Unit. N1788 thought that it would be very peculiar for a unit like SFHQ(A) to react in an executive manner to observations from a Staff Officer. The consideration that was being undertaken was a Campaigns level consideration, with N1788 examining what had happened in theatre and his analysis being reported up to N1466; it certainly did not involve N1788 speaking to anyone at this stage in theatre himself. N1788 was pretty sure he did not speak to any Commanders in theatre.

Q All right and, again recognising that this is a long time ago, are you clear in your mind that at this stage a question of legality or illegality had not entered your conscience?

A Yes, this, at this moment in time, we, that was not the tenor or the atmosphere of our examination or of these statistics; nor was it a subject of conversations in the Headquarters.

N1788 confirmed that he then sent N2444’s analysis of the DDOs to N2108 the same day he received it, within a matter of a few hours. N1788 explained that he sent the analysis to N2108 the very day he got it because it was common knowledge that these discussions were being had with N1466 and N1803, and therefore N2108 was already part of this conversation. N1788 agreed that he did not send the analysis to N1466 and that the first person he sent it to was N2108, the Legal Advisor in HQ DSF.

Q I mean, at this stage you have not sent it to ACOS Operations.

A No, I don’t think I have, no.

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- Q So whether you are still analysing it or have analysed it, it seems the first person to whom you send this information is the Head of Legal for UKSF.*
- A Yes.*
- Q But this was a Campaigns issue and no question of illegality or legality had entered your mind at this stage?*
- A No, but [N2108] had been a part of these conversations and was part of the Operations Team, so it would be ----*
- Q Well, [N2108] cannot comment on Campaigns' activity, can he? He is not qualified to do that.*
- A No, sorry, if I haven't been clear, Campaigns covers the full remit from J1 to J9, which includes everything from Finance through Intelligence, Personnel and Legality. So campaigning in and of itself isn't an inherently (sorry to use the vernacular) J35 sports like Ops and Plan sports. It involves everything and we are, we were one coherent operations team. I just happened to focus on campaigning as opposed to, let us say, contingency etc. [N2108] provided the legal support for all of it.*
- Q How was he going to give legal support to a statistical analysis of events that had taken place over the last five months in theatre, which he had never been to, on operations that he had never had anything to do with?*
- A Um ...*
- Q You must have wanted some input from him; otherwise you would not have sent it to him before you even sent it to ACOS Ops?*
- A No, I reckon he will have asked for it.*
- Q And there must have been a reason. I mean, do you regularly send out stuff just because someone asks for it?*
- A Er in the Operations team, if he is looking at it on behalf of ACOS Ops, absolutely.*
- Q But what is the lawyer doing as a contribution to this? I mean, if he has got to examine this with a lawyer's hat on ----*
- A Yes.*
- Q -- which is the only way he could do it, what contribution is he expected to give?*
- A Everything from Rules of Engagement to the suitability of the um TTP itself. You know, are we, are we flirting with illegality with the way we're using the TTP, through to his intimate, well not intimate but his relationship with ACOS Pol on all things which might impact reputation, policy etc.*
- CHAIR: But I thought you said to Counsel just now ----*
- A Yes, Sir.*
- Q -- that illegality was not in play at all in your mind?*
- A It wasn't, Sir, but that wouldn't preclude you from sharing it with the lawyer who had numerous responsibilities and, you know, had a picture of everything we were doing at the time.*
- ...*
- Q When you wrote "It probably needs a bit of balance", what did you mean, please?*
- A Er I think that refers to the point I made earlier about it doesn't include all the other operations that are taken in that time um, you know, that's probably what I meant by that.*

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Q You refer to “[N2444] [having] dug out blind”, that’s a compliment to N2444, is it not, that he has done a good job?

A Yes.

When questioned why in April 2011 he thought Objective 9 was “*not the best example*”, N1788 explained that three of the engagements did not occur as a result of the TTP. “*They were, if you like, meeting engagements with insurgents where a gun fight then occurred; whereas some of the other OPSUMs [N2444] went through, it was purely a result of the TTP having been amended that the action had occurred.*” N1788 agreed that Objective 9 was an example of the same TTP being used on two occasions, where it seemed the Commander on the ground chose not to change the approach, but it was a less obvious example compared to other OPSUMs dealt with. N1788 could not say for sure whether he and N2108 discussed the information shared afterwards. N1788 confirmed that the only information he could get from N2108 was either whether the Rules of Engagement had been broken, whether the TTP was unlawful or whether there were policy considerations that had a legal and reputational implication. N1788 would also inform N2108’s work on something he, N1466 or N1802 were advising on; it was a two way street. N1788 did not think that by choosing to send N2444’s report to N2108 before sending it to N1466, it was an invitation for N2108 to offer advice on it. “*...I don’t know the precise provenance of my decision to forward that to him. I think it’s more likely that he asked for it or that ACOS Ops asked me to share it with him, one of the two.*”

N1788 confirmed that he then sent an email to N1466 with N2444’s report, two hours after he sent the same information to N2108 (MOD-198-0002046-A). N1788 confirmed that he applied his analysis to what N2444 had provided and also added to it. N2444 had written ‘*I counted 10 separate incidents (spanning 8 separate operations) ...*’ whilst N1788 wrote ‘*There are 11 separate incidents (spanning 9 discrete operations) in which the TTP of sending a Bravo back into a building to assist with clearing it resulted in that same Bravo getting killed (‘reaching for a [weapon]’ etc from the OPSUMs*’. N1788 confirmed that in his list of relevant operations, he included two new DDOs which had not appeared in the analysis of N2444: Objectives 3 and 4.

N1788 then gave evidence on the details of Objective 4.

Q And what I wanted to ask you was this, please. Why it was that you chose to add this DDO and OPSUM to the selection that were said to involve the use of a TTP with sending a bravo back in the building to assist with clearing, because it may be that I have misread it and I would welcome correction, but it does not appear as if that TTP was used on this particular DDO.

A I think you’re right. I think you’re right and I don’t know precisely why I included it other than against um surmising that it had similarities but wasn’t exactly the same as sending the bravo back in.

N1788 listed the following Objectives as being relevant: Objectives TYBURN, 2, 3, 4, 5, 6, 8, 9, and 10. N1788 explained that he removed N2444’s observation that Objective 9 did not read

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well as he did not think it was the most apposite example of the TTP being used resulting in EKIA.

N1788 was referred to the document outlining Objective 10 from 2 April 2011, during which the TTP was used twice resulting in the death of the bravo who was sent back inside on both occasions.

Q So, within the space of [time given], the TTP is used twice and, on both occasions, results in the death of the bravo who is sent back inside either as described “to facilitate the clearance” or to “open windows and pull down curtains for security”. Would you suggest that [Objective 10] is one that does not read very well?

A I think [Objective 10] is one which more completely um reflects concerns over the use of this TTP, yes.

N1788 could not recall whether Objective 10 was an operation he had previously discussed with anyone, including N1466.

N1788 thought it fair to say that the DDOs which had a question mark over them would be the sorts of DDOs about which there would be a discussion with N2108, N1803 or others in the Ops Room. N1788 could not recall whether discussions with N2108 would have extended to questions about the Rules of Engagement.

Q I mean, if it had been discussed with [N2108], who came in more frequently than ACOS Policy, might those discussions have been about the Rules of Engagement?

A I don't recall any discussions like that. These weren't, when I say “discussions” I'm probably making it sound rather grander than it was. It was, you know, chatting about things, “Oh I haven't seen this before”. Um where there was a specific concern, that would be more formal and that would have been probably in an office behind closed doors. At that stage, that had definitely not happened with regards to these specifically and the only reason I know that was because, between myself and [N2108], was because at this stage, until [N1466] had issued not the Terms of Reference but “Please can you go and look at this?” I think there was a degree of wanting to, not wanting to talk openly about some of the issues.

Q Why would there be a degree of not wanting to talk openly about the issues? Wouldn't this be the very time to talk openly so that those involved can discuss what is going on?

A Well that, that week when [N1466] started, you know, providing us with an idea that there was going to be some kind of review, “Please look at these”, I think that was the week when he started saying um “Can you just ...” It wasn't so much “Don't tell anyone about it”, it was “Can you take a discreet look at some of these operations?” which was certainly the spirit in which [N2444] and I were looking at this. It is certainly something you wouldn't at this stage talk about with the Ops [role given], for example, on the floorplate, I wouldn't have thought, but that's what I recall in that week.

Q Why would you not want to talk about it in front of the Ops [role given]?

A Because, I mean, I personally would happily talk about it with anyone, but I think and I wasn't quite sure at the time why, but there was a sense that um there was sensitivities

between the units that was increasingly openly known about and I think one of the things driving [N1466] 's concern about this involved inter-unit rivalry.

Q Well, you of course were the first [UKSF1 Sub-Unit] to go out and to take over from [UKSF3].

A Yes.

Q Were you aware of the sense of rivalry that there was as a result of [UKSF1] taking over from [UKSF3]?

A Yes.

Q Was there upset or frustration on the part of [UKSF3] that they had been replaced by [UKSF1]?

A Yes.

Q Did that upset or frustration get as far as either being cross or angry about what had happened?

A Er yes, I certainly heard plenty of stories like that. It didn't, you know, I took over from [a UKSF3 Sub-Unit] and it didn't affect that. It didn't affect the professionalism of how the two Sub-Units engaged with one another but I had certainly heard plenty of stories where that had been the case, yes.

N1788 confirmed that the handover from UKSF1 and UKSF3 was completely professional from one team to the other, as one would hope. He was aware of the rivalry because he heard others report it to him and talk openly, but in hushed terms. N1788 explained that a healthy rivalry can drive performance, improve standards by keeping everyone on their toes, but where tribalism comes in is where the tension arises. N1788 thought the “*inflection point*” of the tension between UKSF1 and UKSF3 came when they handed over to each other.

Q As ever with these rivalries, those who are actually intimately aware of the important events perhaps do not have the sense of rivalry. It is those on the outside and ill-informed looking in who drive the tribalism?

A Um I think there's definitely some truth in that yes.

Q You said that you thought that [N1466] might in some way be influenced by the inter-unit concern or rivalry. Is this something that he explained to you or something that you observed in him?

A It was a sense more than anything else um and there was, to say that he manifested it would suggest some unprofessionalism and that's not what I mean to say at all. He was entirely professional, but I think on occasions he exhibited it as a sort of sense of frustration, you know, “Why has this happened to the unit [...]? I'm not sure”, but it wasn't, in dealing with me, [a UKSF1] man, it was a sense rather than anything explicitly spoken.

Q I mean, was the sense that you picked up that he was concerned about the turn of events that UKSF appeared to have taken?

A Well, I think that was certainly part of it, not the entirety of it, but yes, indeed, I am sure. I hadn't really thought about it like that. You know, I was concerned about these events, as I said, but he may well have put two and two together and, you know, come to that conclusion, but he never articulated that to me.

Q I mean, in any sense do you think he might have been aware that, as someone with [a UKSF3] background, if he was raising concerns about the conduct of [UKSF1], it might be thought that that is driven by inter-unit rivalry?

A I think that is fair. I have subsequently been shown evidence that I wasn't aware of at the time that he specifically refers to that as sort of colouring his approach. In hindsight that makes sense given what I felt was a sense at the time but he didn't confirm it, yes.

N1788 was referred back to the email he sent to N1466 with N2444's report (MOD-198-0002046-A). N1788 confirmed that his email included a comment to the effect that he was aware that DSF had expressed an interest in comparison of the number of EKIA between SFHQ(A) and PF1's statistics. N1788 was not sure whether DSF was actually concerned about the UK killing more people than another Partner Force but agreed that it would be a concern or a point of reference for DSF. N1788 thought that whilst the information around PF1's statistics would have informed some of DSF's concerns about what was going on, DSF would have lacked access to a lot of the data or detail that would be contained, for example in the OPSUMs. UKSF would just get raw statistics of the number of EKIA by Coalition Partner Forces. N1788 explained that the comparison was between SFHQ(A) and not SU1, which therefore included more than just SU 1.

N1788 confirmed that where he had written, *'there are 6 separate incidents (i.e., not included in the list above) in which the number of EKIA exceeded the number of [weapons] officially found on target. I say 'officially' because of the multitude of reasons why all weapons on target might not have been recorded accurately for perfectly legitimate reasons (not found due to time constraints, human reporting error etc.)'*, he largely agreed with N2444 apart from changing the number from 5 to 6 and *'apparently'* to *'officially'*.

N1788 explained that he had described the decision not to include grenades as *'controversial and not necessarily fair'* for the reasons he had given as to a grenade not necessarily being an apt weapon. He agreed that there was also a danger that the insurgent in throwing the grenade may also be putting Afghan women and children who were being corralled out of the compound by UKSF members at risk. N1788 added that on some occasions the insurgent was seen through an aperture priming the grenade and then engaged, and it might not have been the insurgent's intent to throw it where women and children were.

N1788 removed N2444's reference to an *'informal opinion'* in order, he imagined, to protect the informal opinion of his subordinate. N1788 agreed that he was also shouldering the responsibility of N2444's piece of work if there was any consequence that flowed from it. N1788 agreed that the hours that passed between N2444 sending him this piece of work and N1788 sending it on to N1466 could be explained because he carried out an examination of what was provided to him.

N1788 confirmed that the three occasions the APU 'refused to soldier' occurred in December 2010, February 2011 and April 2011. N1788 explained that he reached the view that the APU's refusal to soldier was not in connection with any specific operations as there were a whole list of grievances from Afghan Partner Units across Afghanistan, which included EKIA where they

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were not witnesses to it amongst other issues. N1788 recalled there being several different reasons and it being difficult to surmise on a given day why they were refusing to soldier, explaining that *“I think um and I can’t remember precisely where it is in the evidence bundle, but there is a bit where actually they threaten to not soldier a whole load of times but it then doesn’t manifest by the time the operation occurs. So it was a confused picture”*.

CTI then referred N1788 to two DDOs which occurred in February 2011, namely Objective TYBURN and Objective TURTON. Objective TURTON was a DDO where, of the four detainees, one was a relative of the APU and in Objective TYBURN, there were four EKIA as a result of being shot and killed, two were described as trying to run away and two were described by the APU as being ‘assassinated’. N1788 had not heard the language ‘assassinated’ being used to describe the APU’s impression of a DDO and he confirmed he would have to take any such kind of accusation very seriously.

In N1788’s email to N1466, N1788 did not include N2444’s final paragraph where he wrote *‘In my view there is enough here to convince me that we are getting some things wrong right now’*. N1788 did not think there was a particular reason for not including it. Whilst he agreed with N2444, that was N2444’s view and he was not *“just gonna pass that on in an email”*. N1788 thought this email would have correlated with the time N1466 commissioned the review of the TTP and that they likely had a conversation about it the day he sent the email or shortly after. N1788 did not remember having a *“table top review”* of the relevant OPSUMs with N2444 and N1466, but he certainly did remember having a conversation with N1466 about the research and the DDOs that caused him concern. N1788 thought that precipitated almost immediately the TTP ToRs that N1466 then drafted for him.

Almost all of N1788’s interactions in respect of the review of the TTP were with N1466 because he was his *‘line manager’*, responsible for overseeing N1788 and his work. N1788 could not recall whether N1466 said to him that he was concerned the actions of the Sub-Unit might not fall within the Rules of Engagement.

A I don’t recall that specifically. He, he might have done. I can’t remember. To be really clear, he was concerned principally about the evolution of the TTP and whether it was fit for purpose.

Q But it is possible that in your discussions with him he raised with you a concern he had that the actions of the [Sub-Unit] might not fall within the Rules of Engagement?

A I really, I don’t recall that at all, but I don’t want to say he didn’t say it because I can’t remember the full conversation. It would have put a different light. If that was his emphasis, it would have put a different light on subsequent actions, which is why I don’t recall that being said.

Q I mean, [N1466] was in his evidence clear that his view was that what had taken place was, as he used it, “criminal and unacceptable”.

A Okay.

Q Is that a view that you recall him sharing with you at any stage?

A No, he did not express that and I will be honest, I would have, if that was his concern, I would have queried the subsequent train of events.

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Q In other words, you would have queried whether a TTP review was the correct route to go down?

A Yes, if there was a genuine belief that criminal activity was going on. I mean, it doesn't mean that you couldn't have a TTP review as well, the two are not mutually exclusive.

Q In so far as allegations of EJK are concerned, were you aware whether any allegations of extra judicial killing or unlawful killing had been made against UKSF?

A No, all the evidence that had come through the reporting chain had very clear, even if you didn't agree with the precipitating action, had very clear reference to perceptions of self-defence against a clear and present danger, so no.

N1788 was not aware of the RMP investigation into Objective QO1.

N1788 confirmed that the review he began on 7 April 2011 was to look at evidence of inefficient practice.

Q Given the observations that your SO2 had made that you were clearly getting some things wrong right now, is that not more than just inefficient practice?

A No, I think that is what we were getting wrong and I think in some cases we were getting it seriously wrong.

Q But seriously wrong in the sense that the TTP was being used with avoidable consequences rather than anything improper was taking place?

A Well, I don't think, yes in terms of legality, but that doesn't mean I didn't think it was wrong to lose control of someone that was in your custody who then ended up in harm's way.

N2108's 'Initial Legal Thoughts' email

N1788 was referred to an email sent from N2108 to N1788, four minutes before N1788 sent out N2444's research to N2108, with the title 'Initial Legal Thoughts' (MOD-198-0003619-A). N1788 confirmed the contents of the email from N2108 to N1466 that had been forwarded to N1788. N1788 said he was not expecting N2108's initial legal thoughts; having read its contents, there was nothing in there that necessarily would have surprised N1788.

Q There is nothing in the "Initial Legal Thoughts" sent to [N1466] that surprised you?

A No, so I imagine [N1466] has asked him a question specifically about, you know, "Where do we stand on the legality of this TTP and what's going on?" and he has provided the thresholds for what is when something may be presented to the Service Police and then concludes that, you know, "I think we need to look at the TTP" and of course that is what subsequently happened precipitously after.

Q I mean, given that when it is sent to you there is not even an FYI, it must have been something that you were aware was going to come your way?

A Not necessarily unless I had been in the room at the time and [N1466] has said "Can you forward that email you just sent to me?" I don't, I don't recall if I'm honest the things surrounding it, but that happened all the time in the same way that earlier you mentioned that I had sent him something to keep him informed. I think it's definitely in that spirit.

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Q But presumably you read it at the time?

A Yes, I don't remember it but I'm sure I would have read it.

N2108's paragraph setting out the law referred to the 'legal duties upon a Commanding Officer where there is a possibility that a serious offence has been committed.' N1788 agreed that he was extremely familiar with this legal duty, and that it would seem, from the last few words of the legal paragraph, two possible serious offences that might be considered in N2108's mind were murder and manslaughter. N1788 agreed with N2108's 'observation that the bar for reporting to the RMP, the Service Police, is "pretty low"'. N1788 himself had experience of being reported through the SIR process during which the Special Investigation Branch ("SIB") of the RMP automatically came in and took statements. N1788 confirmed that where an allegation was made in theatre of extra judicial killing ("EJK"), even if it is not made by an eye witness, that allegation should be taken appropriately seriously and an investigation commenced.

In his email, N2108 then identified two Objectives and N1788 agreed that the cases that were the subject of N2108's assessment were some of the very DDOs he conducted a review of with the assistance of N2444. N1788 agreed that N2108's legal advice was that, taken in the round, the DDOs which had been the subject of discussion and concern for the last few weeks and months might cause a reasonable person to suspect that offences had been committed.

Q So we are not talking about inefficient practice. The Head of Legal for UKSF is saying "Actually, if you take a step back and look at this, crimes may have been committed".

A Yes, and just to be clear, the question about inefficient practices was, well you asked me about what was my discussion with [N1466], I think it was.

Q Well "inefficient practice" is what you said to both the RMP and in your statement to the Inquiry. That is what you believed you were going out to look at when you conducted the review.

A Correct.

Q But you have not even been asked to conduct the review. All you have done is the initial sift. The TTP Review is yet to come. I am taking your attention to the legal advice that you were shown which had been provided to [N1466], which appears to suggest that [Sub-Unit 1] have been committing criminal offences on the DDOs.

A Um so er yes as in I think a reasonable person, he is saying a reasonable person might do that, but that's not the same thing as saying that that's what they were doing and there is no, there is nothing in this that I disagree with or at the time would have found um odd and indeed the provision to go to the Service Police always existed and continued to exist whilst I was conducting the TTP Review.

Q How did you not think it was odd that Head of Legal was advising [N1466] to report matters to the RMP when you had said that you did not think that questions of legality or illegality arose at this stage?

A I don't think he is advising [N1466] to go to the RMP at this stage. I think he is just laying out the legal thresholds for doing so, but all I can tell you is that that is not what [N1466] discussed with me.

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N1788 did not call N2108 to clarify that the matter was no longer a question of “*inefficient practice*” as the Service Police were mentioned in his email. When N1788 got to theatre and spoke to COS SFHQ(A) and CO SFHQ(A), he raised that several of the DDOs were under investigation and the response was that they were aware that several of them were moving from SIR to investigation. N1788 was not aware of any investigations being shared with him and he could not specifically remember whether he was given a list of investigations. However, N1788 had been given very specific ToRs by N1466 which did not require asking those questions.

Turning back to the final paragraphs of N2108’s email (MOD-198-0003619-A), N1788 agreed that N2108’s legal advice was that the very least that could be done was a review of the TTP. N1788 had not spoken to N1785 about what it was that had been reported because this was the sensitivity that added a sense of secrecy. As this issue dealt with inter-unit rivalry, N1788 trusted N1466 to have everyone’s best interests in the way he dealt with it. CTI then questioned N1788 about N2108’s observations relating to OPSUMs.

Q ... Did you agree that there was a “tendency to paraphrase and cut and paste”?

A I did, yes.

Q Is that something that you had observed [during your Sub-Unit command appointment]?

A Er no, but I could see how it was easy to happen if you weren’t, you know, tactical empathy here. You come back off an er an operation um, you’ve probably got [limited] hours’ sleep ahead of you. I can understand how it occurred that some OCs were less rigorous in their approach to checking the OPSUMs. Initially it has to be compiled by Ops Room staff because you are on the ground and they are not, but it should be checked and corrected before it goes out with your signature. So I’m afraid, yes, I agree with [N2108]’s view of this and it is something I spoke about with staff when I went to theatre.

Q Tactical empathy aside, as you have just observed, it is the duty of the OC to check it, to correct it and only to sign it if he is satisfied as to its accuracy.

A I concur.

Q And I presume that in your time [holding the Sub-Unit command position] you were at pains whenever required to check the accuracy of what you signed off?

A I was.

The TTP Review – Preparations

N1788 confirmed the chronology leading up to the TTP Review and the prior day’s evidence.

N1788 confirmed that if N1466 needed to draw together the threads to give advice to DSF, he would look to subject matter experts like N1788 as the Campaigns lead to look at the DDOs, the principal Legal Advisor, N2108, for the law, and N1803, for any concern about policy. N1788 could not recall any point in HQ DSF that N1466, N1788 and N2108 had this discussion as a collective. N1788 thought that because of N1466’s “*concerns about some of the sensitivity to do with unit rivals surrounding it. So, by then, I think it was a me and [N2444] thing*”. N1788 confirmed that someone of N1466’s experience ought to be alive to the inter-unit tensions at play and ensure the information he was receiving was accurate rather than affected or coloured by a tension. N1788 did not think he explicitly asked N1466 about where his concerns about the inter-unit rivalry arose from, but that “*it was sort of an unwritten understanding that*

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everyone sort of got it and talking about it in an open forum or an explicit way only added fuel to the fire and we had a responsibility in the Headquarters to play everything with as unbiased a bat as possible”.

The TTP Review - Terms of Reference

N1788 was referred to the ToRs for the TTP Review that started to be set on 8 April 2011. N1788 confirmed that he sent his document to N1466 just after 8pm on 7 April. N1788 could not say for certain that he was expecting to be tasked to complete a TTP review with ToRs but N1788 was “*impressed in some way when I received the ToRs that they were so fully formed and mature, which I think suggested, I assume, that um N1466 had thought about them overnight or at some point in between*”. N1788 did not know when N1466 dealt with the ToRs but assumed N1466 wrote them as he checked N1788 understood them. N1788 had never done a review of this sort before but as it was a Campaigning issue and he had deep knowledge of these operations, N1788 imagined they were considerations in the choice for him to go to theatre.

Q At any stage did you think “Maybe it shouldn’t be me because I’ve done the TTP before but I did it very differently”?

A I didn’t, I mean, there were definitely in my mind ... I’d be lying if I was to say it hadn’t crossed my mind why I had been selected specifically, particularly as there was this sense that, you know, something lay behind [N1466]’s very particular focus on them and I think, as he states himself, he had not yet been to theatre and he had not seen any of this first hand, but I absolutely accepted as part of my duties that it would be appropriate for him to ask me accordingly.

Q I mean, given [N1466] had not been to theatre to see it first hand, in speaking to anyone in Headquarters about the TTP, you would be describing a slightly different TTP to the one that was being used at that time.

A Yes, I would, yes.

Q So your discussion with him would have gone something along the lines of “We did a very similar TTP but not quite like this, Sir”.

A Correct.

The TTP Review – Conversations in Theatre

Turning to who he spoke to in theatre, N1788 spoke with N1141 with whom N1788 had a “*broadly professional*” relationship. N1788 and N1141 knew each other socially and professionally, but N1788 would not describe their relationship as close. N1788 was alive to the concern that he would be ‘marking the homework’ of N1141 and the fact that N1141 may take some professional umbrage to his work. However, the only discomfort N1788 experienced was that it was suggested that he should talk to N1141 whilst he was on his R&R. N1788 did not think that was appropriate “*...bearing in mind this wasn’t, the TTP Review was not at this stage a legal issue, this was about reviewing the TTP*”.

N1788 had worked with N1786 before. N1788 thought that, similar to the situation with N1141, he would have been concerned that he was going out to pass judgment on the way people acted

under N1786's command, perhaps more so given N1786 was superior and had had command of N1788 previously. N1788 could not recall seeking the advice of anyone, other than N1466, before he went out but he may have had sidebar chats with other members of the team, such as N1803.

8 April 2011 email chain between N1786 and N1788 relating to the Terms of Reference

N1788 was referred to an email he sent to N1786 on 8 April 2011 at 13:44 (MOD-1980003482-A). N1788 confirmed that by this time there must have been discussions between himself and others about the ToRs that he was going to work under, but he did not recall having spoken to N1802 by this point. N1788 thought that this may have been something N1802 would have spoken to him about, but confirmed that in tasking N1466, N1802 could get all the information he needed from N1466.

Looking at the email, N1788 agreed that it could not have been the first time the two of them had spoken about this issue because the email began as if N1786 already knew what was going on. N1788 had not found any other relevant emails so there may have been a telephone call with N1786 prior to this email. N1788 was referred to his email in which he said: '*Had a further discussion with [N1466] I have not yet seen finalised ToRs for me, but we are in agreement that it is about TTPs, their efficacy and the INS reaction / exploitation of them etc.*' N1788 explained that in his email, he had said, in respect of the ToRs, that '*I think they should say that I am in support of your own study to examine the TTPs*' because it would have been N1786's responsibility to do it under the operational Chain of Command. N1788 was also "*treading delicately*" and just passing on the message. N1788 did not recall N2252 being in the meeting, but thought that he must have been there.

Q ... if your trip to Afghanistan is in support of the CO's study, is there any risk that he is now allowed to take the lead on a review of his own work?

A I think if you're external to an organisation, you, you could see that as a danger. It's just not like that. There would have been a very -- this was unprecedented -- there would have been a very clear message: "We are sending out a Staff Officer from the Headquarters to support your work on this". Having said that, it would be impossible work without his ownership of it, telling his people to talk to me in an open and collaborative manner.

Q And, in describing it as being "in support of your own study", at that point was it your understanding that he had embarked on his own study or that he was going to embark on the study when you arrived?

A I think a mixture if I recall. So there is, yes, this was in some ways brand new work, but I think, you know, some of the emails I've seen have prompted a memory about this person [N1189] that I don't know who it is who he had tasked to look at some of this in theatre I suppose semi-independent of what was going on back in the Headquarters. So I'm not sure but I could be referring to either of one of those two things, so if that makes sense there's a mixture, yeah.

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N1788 confirmed that it was his understanding that in addition to the review he was tasked to do with N1786, N1786 had already tasked someone in theatre to carry out some sort of examination of the TTP specifically, with the DDOs as a central part of that. N1788 was not sure whether the exercise N1786 embarked on was his own initiative or whether he had been asked to do it.

N1788's email to N1786 continued with N1788 writing that he did not want to be '*poking around*' without N1141 present, nor disturb N1141 when he was on R&R. N1788 explained that this was due to professional courtesy and that he considered it "*less than optimal*" for N1141 not to be there. N1788 said "*I would be getting information from work directly for [N1141] in the Chain of Command, he is their Commander and, yes, they could get a direct order from [N1786] to assist me, but it would be less profitable and probably less collaborative without him there.*" N1788 agreed that N1141's subordinates would be more comfortable speaking to an outsider if N1141 was present. There was an element of professional courtesy, but also realities of human dynamics.

N1788 also explained that he questioned in his email to N1786 (MOD-198-0003482-A) whether his plan to visit theatre suited N1786 '*as much as it can do under the circumstances*' as he thought he might ruffle a few feathers and accepted he would be disrupting a very busy operational programme.

CHAIR: -- you used the word "*unprecedented*", that it was "*unprecedented*".

A Yes.

Q Why was it unprecedented?

A Sir, it wasn't unprecedented to go out in support of the [Sub-Unit]. We often conducted something called a staff surge to assist in solving issues, but when it comes to the specifics of a Chain of Command responsibility for effectively ensuring its operations were correctly carried out and the ramifications for them dealt with, that would normally be a Chain of Command issue, not the purview of a staff branch in the Headquarters. So when I say "*unprecedented*", I am referring to the specifics rather than the actual activity of going out to support the [Sub-Unit].

Q Was this something that you had never seen before?

A I don't think I had ever seen that before, no, Sir.

N1786 had tasked another individual in theatre, N1189, to complete a review of the TTP independently from N1788 arriving. Whilst N1786's email on 8 April 2011 at 15:02 said '*[N1189] has come back to me this afternoon with an update on his own review of TTPs*', N1788 could not recall N1189 or his review (MOD-198-0003482-A). N1788 accepted that the way it was written up would appear to suggest that he knew who N1189 was. N1788 confirmed that he did not know what the '*audit trail*' N1786 mentioned was referring to. However, N1788 explained that his comment about N1786's '*implication*' being '*inter-unit*' was a reference to "*not necessarily something from [UKSF3], but someone in those circles casting aspersions on the way presumably by extension [N1786] puts that [SU1] were doing their business*".

N1788 confirmed that he understood the rivalry to be between UKSF1 and UKSF3 which he thought was "*disappointing*" because Headquarters was not trying to encourage the tribalism.

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N1788 confirmed that N1466, N2252, N2108, he and his team, and N1802 all had concerns about the TTP and the high EKIA rate independently of any tribalism.

At lunchtime on 8 April 2011, N1788 had not yet seen the finalised ToRs. N1788 was referred to the first version of the ToRs dated 8 April (MOD-1980002062-A). N1788 agreed that the TTP was described as being designed to protect the Sub-Unit, but he did not think that was the only analysis of it; it was designed to protect people on targets, particularly women and children, reduce collateral and provide a degree of cultural sensitivity. N1788 agreed that if the Sub-Unit sent an unrestrained male in to a compound who disappeared out of sight, there is no guarantee that he was going to identify a hiding occupant. N1788 considered it a possibility that if an unrestrained male was sent into a room and able to disappear out of sight, he might at that moment choose to activate an IED. N1788 agreed that the male could step over a pressure plate, avoid a wire or set off a command wire or radio controlled IED when out of sight in a building in the compound. N1788 agreed that if, for example, people are behind the Afghan male or peering at him through a doorway, because he was unrestrained he could set something off, possibly dying in the process, but doubtless hurting members of the Sub-Unit in the process. N1788 agreed that if the TTP was designed for force protection, it did not do a good job of protecting against these threats. N1788 explained that the TTP was also about making it easier to identify threats and making sure there were no women and children in there to reduce collateral.

The TTP Review – Concerns with the TTP

N1788 explained that what offended his professionalism the most was the fact that the APU refused to soldier on three clear occasions. N1788 thought that having taken custody of someone, there is a degree to which the Sub-Unit was then responsible for them, but to lose control of them “*talks to your professional ethics*”. N1788 explained that the far wider-reaching consequence of the APU saying “*We aren’t going out on DDOs again*”, was that the DDOs could not take place. N1788 highlighted that there was a wider issue in Afghanistan at that time as it was supposed to be the beginning of the transition in which Afghan security forces would take greater responsibility and sovereign agency over such operations. N1788 confirmed that the intention was the withdrawal of British troops, allowing the Afghan troops to step in to fill the void. As to N1466’s intent, N1788 thought it was clear and that despite “*cranking this out under some time pressure*” N1788 was never in doubt as to his intent to get after this as a global issue. N1788 thought N1466 had written the ToRs because he thought the first time N1466 called him in, he asked whether N1788 had seen and agreed with the ToRs and they subsequently came from DSF to the CO SFHQ(A).

N1788 confirmed that the balance in the ToRs was “*effective detention and exploitation*” on the one hand, through searching at the scene or questioning the detainees, and on the other hand it was not exposing the Sub-Unit to undue risk. N1788 thought it was fair that the protection of Afghan nationals was not explicitly identified as a matter of concern in the ToRs, but it was at the forefront of N1788’s mind. N1788 had had conversations with the team about things on the DDOs that could be done better and was very aware of the strategic situation, and that there was a particularly unpopular feature of the DDO strategy.

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Within the list of things he was specifically asked to examine, N1788 thought the absence of the question as to whether the TTP had changed was because it was recognised that it had changed from what it once was. N1788 explained that when the ToRs referred to ‘*The TTP may no longer be appropriate in that it offers the insurgent an opportunity to arm himself*’, if N1788 was to make one retrospective correction, it would be to say “*the evolved TTP*”. N1788 confirmed that the initial focus he was invited to have was on the insurgent reaction to the TTP itself, whether there had been some sort of collective response to the way in which UKSF were conducting themselves. N1788 agreed that the ‘Recommendations’ in the ToRs did not speak to how it might be possible to avoid the deaths of Afghan males, but he took that as read. As to the ‘legal implications’ section, N1788 confirmed that paragraph read ‘*The Review is not to recommend disciplinary or administrative action against any individual*’, reserving that for the CO SFHQ(A). N1788 also confirmed the part of the ToRs that said ‘*However, if your review leads you [to] believe that any criminal act may have been committed you are to notify both him and myself at the earliest opportunity*’ as meaning that if N1788 reached the view that someone had done something illegal, rather than going to the Service Police, they had to speak to N1786 and then to DSF straightaway.

N1788 was not expecting to uncover criminal activity, but that N1466 was likely trying to give him as specific ToRs as possible. N1788 confirmed that he had sight of the legal advice from N2108 which identified the argument that service offences may have been committed, but N1788 did not think he went to N2108 to check whether the legal implications of the terms sat within the advice he had received.

Q When you read this, did you go and speak to [N2108] to just check that the legal implications as you read them here sat squarely with the legal advice that you had seen only the day before?

A Er I don't think I did that and um regardless of what anyone says, we all have a duty to think as commissioned officers that, if we think something is amiss to report it anyway, so um it would be rather restating what I already knew.

Q And reported to whom, please?

A Er whoever you think is appropriate. In the first instance, it is of course always appropriate to talk to the Chain of Command because, firstly, they are invested with the authority to do something about it because it is their responsibility and in the British sense command authority is invested with legal responsibility, but you always retain the right to, you know, go to the Service Police if you should deem it necessary.

Q I mean, given that there is that retained right to go to the Service Police if necessary, how did you feel when you were told in your instructions that you were to go to DSF and [N1786] rather than anyone else?

A I, I must admit that I didn't, I don't think I saw that as particularly problematic or in any way arched or anything other than just giving me the tightest Terms of Reference possible.

N1788 was then referred to the revised ToRs dated 11 April 2011, in which the ‘Legal Implications’ section read ‘*If your Review leads you to believe that any criminal act may have been committed, you are to notify RMP and myself at the earliest opportunity in accordance with*

the Armed Forces Act 2006 and the relatively low bar for reporting. Whilst N1788 assumed he would have noticed the difference between the two versions of the ToRs when it came to the requirement to report to the RMP, N1788 did not think that would have been abnormal because he was now talking to the command authority in whom legal responsibility was vested.

Q I mean, what you said in the witness statement to the Inquiry was that the prospect that EJK had taken place was not even on your mind at the time of the review. Did you think to ask “Why am I being told about legal implications if this is not an enquiry into allegations of wrongdoing?”

A No because, I mean, [N2108] had already laid out his thresholds for legal interpretation of what was going on and of course you are dealing with the killing of people and therefore the law is always relevant, but I was very clear I was going out to examine the TTPs but those two things, the premise that those two things are mutually exclusive never entered my mind. One is to deal with the TTP’s future-facing and one is about, you know, should this be so, should evidence or a reasonable case be made that something illegal is going on here, everyone still retains the ability to pursue that line of enquiry.

Q So at least in your mind when you embarked on the TTP Review, you had an eye to the legal advice that [N2108] had provided to [N1466].

A Yes.

Q That is the low threshold for reporting, the relevant offences being amongst them murder and manslaughter.

A Yes.

Q The fact that it is arguable that Service offences may have been committed just when you read the OPSUMs.

A Yes.

Q Okay and you had an eye to the statistical analysis that [N2444] and you had done, which appeared to support concern over the OPSUMs in general. Is that fair?

A Yes, and I myself had been subject to Service Police enquiries and, therefore, I always knew it was a part of the post-incident procedure possibilities.

Q So at least in the back of your mind when you embarked on the TTP Review was “I have got to have an eye to whether something has gone wrong that needs to be reported”?

A That’s yeah, that is always an inherent part of an officer’s job, but, again, I was specifically being sent out to look at the TTPs and, as the previous Terms of Reference said, not to necessarily, you know, not to be a policeman.

N1788 then agreed that it was unusual for a senior Headquarters, such as HQ DSF, to descend into the level of detail of looking at a TTP and the Sub-Unit “losing control of the detainee”. N1788 thought people might have felt uncomfortable because the external review was not something that had happened before, but the clear ToRs which said this was a CO SFHQ(A) supported activity would have ameliorated that. N1788 agreed that in simple terms questions were being asked of N1141’s Sub-Unit and N1786 as Commanding Officer.

N1788 thought there were certain elements to which UKSF was an organisation that prided itself on the ability to identify and address problems and to learn, but the context and tactical situation that SFHQ(A) found themselves in was important. N1788 explained “...I mean, there

are certain elements where I think that is true. The reason I sort of paused just now is just to make the point that I also think that this was about us understanding the context, the tactical situation in which the [Sub-Unit] found themselves, which was not easy. So, yes, it was a review in support of Commander [SFHQ(A)], but bearing in mind all these discussions were happening at 5,000 miles removed, equally it was about how can we help the [Sub-Unit] get through this and understand the situation better?”.

The TTP Review – Conversation in Theatre

On the flight out, N1788 did not recall talking to N1141 and it would have been inappropriate to discuss the Review in that open air environment, but thought their interactions were absolutely fine and that they must have spoken about it in broad terms. N1788 thought N1141 “*was surprised, but collaborate and collegiate is how I would describe it.*” N1788 thought N1141 was surprised that there was a review and that “*their performance was under any kind of scrutiny*”. N1788 thought N1141 was aware that the relationship between his Sub-Unit and the APU was deteriorating very significantly.

Q In any way had he recognised there might be a problem?

A I think, I mean he certainly was aware that the relationship between his [Sub-Unit] and the APU was deteriorating very significantly. He was absolutely aware of that. The causality of it I think was less clear in his mind.

Q By that do you mean he had not made the connection between the TTP that was being used and the EKIA that resulted as being the reason why the APU were unhappy?

A Not in the discussions I had with him. He became um open to the idea, but certainly in our initial exchanges there was definitely a sense of surprise, but no sense of being obstructive or anything like that.

Based on their initial discussions, N1788 thought N1141 had not made the connection between the TTP being used and the EKIA that resulted as being the reason why the APU was unhappy. N1788 thought N1141 identified the APU as being at least partially responsible for the breakdown of the relationship. N1788 did not recall having a specific conversation about the occasion that N1791 was said to have been threatened with a pistol during a meeting with the APU.

N1788 was then referred to his first statement to the RMP (MOD-198-0002040-A) and the paragraph entitled ‘*My interaction with OC [SUI][N1141]*’. N1788 believed N1141 had no concerns with the TTP being used and was unaware that there was a “*potential problem with its employment*”. By the end of his Review, N1788’s assessment was that the Sub-Unit had lost control of the detainees. N1141 had explained to N1788 that “*they had to do things a different way and take control by this combination of (a) more aggressive insurgent response and (b) that the APU were not up to the task so, you know, they had to do things the way they did them*”.

N1788 was referred to the part of his statement which read: ‘*He explained the TTP had been developed over time to minimise the risk to his personnel and the safety of all personnel within the target location, and was a response to the ... IED threat amongst others.*’

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Q So to his mind the development of the TTP was to protect the [Sub-Unit], so that is the [Sub-Unit] rather than anything else.

A Er yeah, well everyone on target I think he says, "all personnel within the target location".

Q "All personnel"?

A Yeah.

Q I mean, "personnel" is the [Sub-Unit], is it not? It is not the Afghan members of the household.

A Er no, I think he means everyone.

Q You think he means everyone?

A Yeah.

Q Right so they developed a tactic of sending in an unrestrained male to protect everyone?

A Yeah, I mean, I think that's what he's saying.

Q And that is a tactic which you understood meant that they no longer had control of the detainee?

A In some of the circumstances of the DDOs in question, that's my, that was my view of it, yes.

Q I mean, if you send an unrestrained male out of sight into a building, by dint you must have lost control?

A Yeah, I mean, that's my view of it, yes.

Q It is obvious, is it not, because that person can do whatever they want once out of sight because they have got two free hands?

A Yes, and but just to be clear, you know, the version of the TTP that I was familiar with you could say that you had lost some control of the nominated male but that, on the balance of benefit, it was worth it for the additional control and safety for everyone concerned that you had got. My issue here is that the evolution of that had brought that balance out of kilter.

N1788 was referred to the paragraph in his statement to the Inquiry in which he described his version of the TTP as being a senior male going back into the house restrained, often accompanied at a safe and respectful distance by a Sub-Unit member, to retain control, to encourage the remainder of the occupants to come out, and to open any doors so that the Sub-Unit members could then enter the property in numbers, and secure it and search it, prior to then questioning the occupants in a safe environment. N1788 confirmed that the adult male would go back in with plasticuffs, often accompanied at a distance. On his version of the TTP there would have been periods where the male would have been out of sight. N1788 confirmed that although a small amount of control would be lost of the adult male, the Sub-Unit member was nearby so if the adult male disappeared from view, the Sub-Unit member could quickly move to keep sight of them, and the Afghan interpreter could relay instructions should that be necessary. N1788 thought it a fair assessment that the objective was for the detainee to obey commands that were being issued and ultimately to be sufficiently intimidated so that they did not then pick up a weapon or try to engage the Sub-Unit. N1788 agreed that ultimately the last thing he would want as an OC is for a Sub-Unit to lose control as anything could happen.

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N1788 was referred to the part of his first RMP statement (MOD-198-0002040-A) in which N1141 sought to explain the APU breakdown as being due to their failure to ‘*to check rooms within buildings, conducting poor searches and in certain cases eliciting a degree of sympathy for insurgents due to tribal affiliations*’. N1788 agreed that N1141’s assessment was that on occasions the APU might sympathise with insurgents, with members of the Taliban, adding that CTI had raised a case where one of them might and “*in fact, many of them were related to members of the Taliban*”. N1788 agreed that the cases referred to by CTI included one where an individual said his cousin who was not a member of the Taliban was shot and killed and another DDO from February when a former APU member had been detained and the “*APU were saying “He can’t be a member of the insurgency because he was once with us”*”.

Q All right. Now, were you surprised when [N1141] failed to acknowledge that he and his [Sub-Unit] had lost control of detainees during the course of operations?

A Yeah, I mean, again, thinking back, I don’t remember the exact phraseology he used or how I felt about it, but I think it is fair to say I was surprised at his surprise at what I was putting to him.

Q I mean, in one sense he might have been defensive because you were challenging the efficacy of those under his command and there might have been an immediate reaction “Well, we haven’t done anything wrong, everything has been fine and we have done this for a particular reason”, but how does that sit with his position as an officer and the responsibility that he had for those under his command and also for those detained by those under his command? Did you think he ought to have appreciated the problem that had arisen?

A So through the prism that I had viewed all of this, albeit from, you know, 5,000 miles away, yes, I think that there ought to be some appreciation of the knock-on effects of what was happening, particularly as transition and the position of our Afghan partners was so critical at this time, but to be fair to them, at the very front of their, their mind was the protection of coalition forces including British soldiers, who were being blown up on a daily basis and so um on the one hand, yes, he should have been aware of it; on the other hand, he very much saw his business as the protection of UK and other coalition forces.

Q And ultimately he also had a duty to protect those who were detained by his [soldiers] on a DDO.

A Yes, I think that’s fair.

N1788 explained “*I was surprised that he couldn’t see where this might lead, but again it would be difficult for me to put myself in his shoes, particularly his frustration with the Afghan Partner Unit about which I think he felt a degree of umbrage that people didn’t understand more how difficult he found their lack of proficiency*”.

Q Well, the APU were not at the forefront of doing the DDOs at this stage, were they?

A They weren’t, but I think they had been much more at the forefront and it was the experience of them that had made him revert, if that is the right verb.

Q Revert to what, sorry?

A To er us taking more of the lead in more activities.

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Q But if that is right and if [N1141] and his [Sub-Unit] were taking the lead in the activities, the decision to send an unrestrained male back into the house had nothing to do with the APU. That is [N1141] and his [Sub-Unit's] decision.

A Correct, yes.

Q So the fact that control was being lost to the situation had nothing to do with the APU did it?

A No, I'm not denying that ----

Q Right.

A -- but in terms of his position of all of this, whilst through one lens and certainly my lens I was surprised at his surprise, through another lens, I imagine, you know, a tired individual going out [repeatedly] doing what he thinks is absolutely best to achieve his mission, I think he thought there would be more sympathy for his position of dealing with, you know -- I'm putting words in his mouth -- a truculent Afghan Partner [Unit].

N1788 agreed that the reality of the position in which N1141 and his Sub-Unit found themselves was that they were facing very real threats from people that were sent back into these compounds.

N1788 explained the time consuming elements of collecting evidence during a DDO and highlighted that in N1141's experience, "getting the Afghans involved more meant that they were running out of time". N1788 also explained that "a particular failing of the TTP" was that N1141 and his Sub-Unit were in "greater proximity to the male who was going in in order to chivvy them along and speed things up".

Q If you want to follow them ... to keep observation on them, there is no reason not to restrain their hands, is there?

A No and well, I mean, I would still want them restrained if I'm honest, but in my, my opinion, I think they were, as they had evolved this TTP they were falling between stalls, i.e., you know, my view is you either send the guy in and let him unfettered do his thing and then if he is going to threaten you he has got, it has got to be really obvious --

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Q Right.

A -- or you effectively go in with him as your guide [to maintain control] and then he can't really do anything. I think they were falling between the two stalls.

Q In effect, if you want to go in with him as your guide, you [want to be in a position whereby]----

A That's right.

Q -- you have control over his movement and he is conscious that you [are covering him with a firearm] at all times.

A Correct.

N1788 then confirmed the part of his first RMP witness statement in which he noted his surprise at N1141's surprise, but that at least N1141 took on board why he was there.

N1788 was referred to the part of the same document in which he described the Sub-Unit sharing N1141's concerns that the APU were not up to the job and that despite these difficulties, the Sub-Unit thought they were doing a good job and that their TTPs were appropriate to the tactical situations in which they found themselves. N1788 agreed that like N1141, no one on the Sub-Unit appeared to have appreciated there was a loss of control over the detainees; "*I mean I didn't talk, you know, this wasn't an investigation so I didn't talk to everyone individually, but there were no dissenting voices that they weren't pursuing things in the right way*".

When N1788 spoke to the Sub-Unit, he could not recall whether N1141 was there. He definitely spoke to the Sergeant Major on his own and would have spoken to the Call Sign Commanders. N1788 remembered speaking to N1791 whilst in theatre over the phone. N1788 was then referred to the part of his statement that described what N1791 had described as a '*strained relationship*' between the APU and Sub-Unit 1. N1791 then explained that the relationship was strained because it was a relatively new cycle in the operational readiness mechanism of cycling all of the APU Sub-Units through a partnership with Sub-Unit 1.

N1788 agreed that the example discussed earlier in his evidence of an APU soldier being so angry he produced a pistol would be a good way of testing their disquiet with UKSF. N1788 was sure he discussed the seriousness of his Review with N1791, despite not being part of Sub-Unit 1, he understood N1788 was there to investigate the TTP. N1788 was not sure whether he discussed the loss of control element with N1791; their talk was "*much more about the impact on the Afghans and the sustainability of the current situation*".

Q ... When [N1791] gave evidence, he said that his recollection of discussions with you included the use of a particular phrase by you and you have dealt with this in your witness statement and I just wanted to ask you about it if I may, please, [N1788]. His recollection is that in discussions with you, you raised the possibility of very serious criminal offences having been committed and used the phrase "the M word", a reference in short form to murder.

A Mm mm.

Q And we know of course that murder and manslaughter were identified by [N2108] as two of the very serious offences that might warrant police investigation. Thinking back now, is there a possibility that you touched upon [N2108]'s advice and spoke about very serious offences that might have to be referred if there was evidence?

A I don't recall that further. I go further. I refute that because that would have been, that would have changed the entire tenor of what I was doing and it would also, either retrospectively or at the time, have put a very odd onus on both of us, including [N1791], if that was believed to be the case, particularly as he is in the Chain of Command responsible for looking after this. So I don't recognise that or recall it.

Q If what had lain behind the TTP Review was criminal allegations, would the TTP Review have been an appropriate way to deal with it?

A It would have been, sorry, it would have been appropriate to ensure going forward that things were done the right way but in and of itself that is not how you deal with criminal investigations, no.

Q I mean, in and of itself the way you deal with a criminal investigation is to report to the Service Police because they are the subject matter experts?

A Correct.

Q Is that why both in your Terms of Reference on 8 April and the Terms of Reference sent to [N1786] on 11 April the question of reporting to the Service Police was raised at least at the end of the document?

A I don't know the motivation behind that, but it's a possibility.

Q And did you seek any legal advice from [N2108] at any stage either before you went to theatre or whilst in theatre or indeed when you got back?

A I certainly didn't whilst I was in theatre and I think I have already stated I don't think I did beforehand, although we would have been engaging. After the event, I imagine it would have been discussed. Whether you would describe that as me seeking legal advice from him I'm not sure.

Q No one likes to speak to a lawyer at the best of times, but whether it was advice or not that you sought from him, when you spoke to him, did you discuss with him the conclusions you had reached about what had been going on in theatre?

A I don't know but he would have been aware of it because he would have been privy to my report, which I think is very explicit about what I think is happening and what needs to be done about it.

N1788 did not consider N1141's surprise with what was being brought to his attention as a suggestion that he was not in control of what was going on. N1788 thought N1141 was dealing with a different set of priorities and he "genuinely thought they were going about their business the right way". N1788 then went on to explain "I mean, the sort of indignation is too strong, but it was, it was heartfelt. I felt it was very genuine what he was saying to me, even if I disagreed with his analysis of the situation; and the fact that the [Sub-Unit] were very much in his, you know, mould in terms of what they were saying as well and their view of the ways things were going about would suggest that there was just a synergy there rather than necessarily a lack of ability to control what was going on."

The TTP Review – Report Findings

N1788 thought it would be unfair to say that N1141, the OC of SU1A, had not appreciated things properly but N1788 did think they were getting their priorities wrong when on target and told them as much. N1788 thought the Sub-Unit was failing to strike the right balance when "conducting a DDO, [at] speed, getting to the end of it, achieving the mission as stated to capture, you know, whoever it might be at the expense of others".

Q Were you able to place any reliance on what [N1141] and the [Sub-Unit] said about their confidence in the job they were doing when they appeared to have completely missed this fundamental error?

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A Well, yeah, I mean it's, I mean we, it's a fundamental tenet of how military organisations work and specifically Special Forces that we trust one another, so it would be a hubristic individual when [a soldier] looks you in the eye and says "Listen, I think we're doing a really good job" to dismiss that out of hand, and these are good people. You know, these are, I knew many of them etc., but I think whether it was a degree of group think or whether they sort of just got out of kilter their various aspects of their mission, I think they were getting this wrong and I told them as much.

Q And that is precisely the point. It may have been a hubristic individual who would have challenged them, but ultimately you did not think they were doing it the right way.

A Er yeah, within the parameters that I have laid out in my TTP report, yes, I agree.

Q And they could and should have done it a better way.

A In my opinion, yes.

N1788 confirmed that N1786, Commander SFHQ(A), signed off the TTP report but that he had drafted the findings and recommendations. N1788 confirmed that he did the task, N1786 took on his work and then took responsibility for it by signing it off.

Based on the recommendations in his report (MOD-198-0002063-A), N1788 agreed that the TTP was developed as a force protection measure for the Sub-Unit. N1788 confirmed that the key question was about the evolution of the TTP that saw an unrestrained male sent back into the compound to increase the safety of those people on the ground and to increase the speed of the operation. N1788 then confirmed the contents of his recommendations and agreed that the most obvious change to stop people being shot and killed was the application of plasticuffs to the person sent inside. N1788 explained what he meant by the recommendation of '... refraining from using Bs to assist in the searching of the compounds, unless there is a compelling reason to do so ...', as being that whilst Bravos are useful to clear fields of fire and move curtains to one side, the Sub-Unit should not have put a significant onus on them to search for things as well. N1788 confirmed that the original intent of the TTP was not what it came to be used for, namely to clear lines of sight and also search. N1788 agreed that the danger of using a Bravo to search was that it allowed them to look under things, rummage through cupboards and pick things up which might end up being a weapon.

N1788 explained that he thought N1786 was making recommendations to DSF and inviting him to agree these actions as a courtesy to DSF and to give him the opportunity to disagree, if appropriate.

N1788 then confirmed that he had experience during his time of individuals posing a threat after they had been sent back into compounds, but that it was very rare. N1788 also confirmed that one explanation he gave for the increased number of EKIA was that the insurgency had identified UKSF's TTP of sending an unrestrained male back into a building and they developed their own TTP in response.

Q But, I mean, if you are right in that possibility, the insurgency has responded to your changing TTP, but you, UKSF, have not recognised the insurgency's change in TTP and responded to that?

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A Yeah and so, I mean, I think that's, that's a fair way to look at it. I don't think anyone would consciously say that, but you're right, the two interactions evolve over time.

N1788 then agreed that the comment in his review about cornered insurgents forcing a kinetic engagement to deliberately damage ISAF's reputation amongst the local and wider populace and that they had devised a TTP with wide-ranging political impact on the position in Afghanistan as a whole, was a possibility. N1788 agreed that there were macro considerations of what was going on for N1786 as CO SFHQ(A), and micro considerations for N1141, as OC SU1A, because of his focus on DDOs.

Q I mean, certainly in your review, what is clear is that the Taliban seem to have developed their own TTP in response to your TTP.

A I'm saying it's a possibility. I'm not saying it's, I think I'm quite clear there, it's a possibility and I'm not saying that is what they've done.

Q No, but you have raised it so that it is brought to the attention of [N1786] and ultimately, if he agrees, brought to the attention of the DSF.

A Yes.

Q So you are at least accepting the possibility, it seems, that they have got one over on you.

A Yes, I think at one level, yes.

In terms of the wider issues identified in his report, N1788 identified the Afghan Ministry 2 as leading the Afghan Partner Units to view DDO initial detention as synonymous with Sub-Unit 1A 'custody'. However, N1788 agreed that it was also UKSF's culture that was responsible for this outcome with the APUs, as people in the custody and detention of UKSF had been allowed to arm themselves, forced a kinetic outcome and been killed whilst under the Sub-Unit's duty of care.

N1788 agreed that the members of the Sub-Unit themselves should take the duty of custody and detention seriously because they were detaining individuals who were then in their custody.

A ...One thing I will point out though, you know, certainly from my experience of using the TTP and what the [Sub-Unit] were adamant they told me, these people who went back in only did so voluntarily. They weren't forced to go back in.

Q But that does not remove a duty of care to them as a detainee, does it?

A I am just adding the context, Mr Glasgow.

The 'Cultural Knowledge' section of N1788's report noted that '*the relatively recent differing [Taliban] reaction to [SU1A] DDOs in the phases following a successful call-out remains at odds with [the APU] members; recognition of Afghan culture and behaviour, where [Taliban] or not...In particular in the opinion of [the APU] the presence of a [Bravo's] family, or women and children...would be incongruous with violent resistance and sacrifice*'. N1788 confirmed that he had picked up on that while speaking to the APU in theatre, and added that '*the difficulty, just to provide context and not to naysay what I have reported on which I still fully stand behind, is that it was not always the case. In the way the Taliban would do this, they*

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would effectively inveigle themselves into that family and, whether it be in the outhouses or their main living accommodation themselves, they would be there. So, I, I'm not going to naysay [the APU's] view of Afghan and Pashtun culture at all; I'm just saying that sometimes it wasn't always the family member who was doing the, or it wasn't a family member doing the going back in".

In his report, N1788 referred to a serial review of the TTPs that had been ongoing since APU1's concerns came to light. When questioned, he was not sure whether the refusal to soldier by the APU in February was the trigger for the serial review of the TTPs, nor whether the review had therefore been ongoing for a period of weeks by the time he arrived. He did recall that the current use of the TTP had been suspended pending his review, but this was not a permanent suspension and agreed that there perhaps should have been reference to this in his review.

As per the ToRs, there was a very specific question as to what was impacting the APU's position now. N1788 confirmed that from discussions he knew the APU refused to soldier in response to DDOs that turned kinetic. As to whether N1788 thought APU1 would ever be up to the task, N1788 explained that there was always a tension between APU1 taking part to allow a transition following UKSF departure and members of the Sub-Unit who thought they were problematic or inefficient.

N1788 explained that he considered the original TTP, not the evolved TTP, to serve the purpose of protecting everyone, taking into account the cultural norms and protection of the Sub-Unit. N1788 confirmed that the comment that "*... it is now evident that the sum of these amendments has resulted in a fundamental change to the overall effect*" is another way of saying that it was apparent from the changes that the Sub-Unit was losing control over detainees, and that the original intent of the TTP had been undermined.

Q If I have understood your assessment of the [Sub-Unit's] conduct during these DDOs, you are not overly impressed with the way this TTP was employed. Is that fair?

A I think it's fair to say I would not have done it that way and I think it was no longer meeting the requirement that it was originally set out to achieve, yes.

Q And that should have been obvious to those in theatre, certainly at a macro level.

A I think it should have been obvious, but, again, that is through my, you know, the luxury of my position.

Q And even at a micro level, do you think [N1141] ought to have grappled with the situation in which his [Sub-Unit] were seemingly coming under regular threat by unarmed males sent back into compounds?

A Um yes. I mean that was part of our conversation.

N1788 recalled giving N1786 the draft review and allowing him to consider it before he flew back to the UK. In terms of the clarity with which he articulated the issue of custody and control, N1788 thought he could always write things better but had not given it that much thought subsequently.

The TTP Review – Significance of the Review

N1788 confirmed that to a greater or lesser extent, the potential amendments to the proposed TTP were all things he considered when reviewing the DDOs back in HQ DSF.

Q Whilst undoubtedly going to theatre availed you with the opportunity to speak to people who had been carrying out the DDOs to ensure that you had tactical empathy and awareness, ultimately the recommendations really derive from your consideration of the TTP.

A Yes, the bit that was missing was obviously (a) the, the context and the reasoning that the [Sub-Unit] had for how they amended it, and (b) this specific question that was part of ToRs about the Afghans' view of them.

Q I mean, it might have been possible to have spoken to people without going to theatre?

A Um more difficult but certainly there are ways to do that, yes.

Q But obviously this was an unprecedented trip for a Staff Officer to be sent out to conduct a review of what those within the Chain of Command were carrying out on operations.

A Yes, certainly very rare.

Q Does that signify the significance with which the DSF wanted this to be treated?

A Um I would have to assume so, yes.

Q In sending an individual out from Headquarters to review what was happening on the ground, might that cause people to sit up and think "The DSF has sent someone to look at this, we've got to take this seriously"?

A I would have thought so, yes.

Q Because it was unprecedented at least as far as you were aware.

A Yes.

Q And involved you asking perhaps uncomfortable questions of contemporaries and indeed of senior officers.

A That's correct.

Q And you found yourself questioning their actions and reviewing what they had done.

A Yes.

Q You had obviously formed the view that there was a loss of control that applied on target because of what was being done. That is not spelt out in direct terms in your review. Is that because you were careful with the language you used?

A Um I hadn't really thought about it not being an explicit phrase in here at all. So I don't think that was deliberate. It may have been that I was being sensitive, but it certainly wasn't my intention to obfuscate that issue.

Q But, if I were to use the phrase "the [Sub-Unit] have lost control of detainees on target", that would be a clear criticism of the way in which they conducted themselves?

A Yes, it would.

Q But the way you had phrased it was there had been "a development of the TTP which had allowed an insurgent response".

A Yes, and I'm sure, you know, I was sure I was careful with my language, yes.

Q What was the need to be careful with your language, because this was a report for the DSF?

A Yes, I still had to ensure that it had [N1786's] buy-in. It was his review. He signed it off. In terms that I was, I thought my language would remove the impact of the report,

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I don't think that, I don't think I ever considered that. I don't think what I have written here does that. I think it is really clear why your specific, the specific phrase of loss of control isn't, and I hadn't even thought about it, isn't in here I couldn't tell you for sure.

Q I mean, do you agree that there is an apparent distinction between “the [Sub-Unit] have lost control of detainees on target” versus “the [Sub-Unit] have employed a changing TTP that has allowed an insurgent reaction leading to kinetic activity”?

A Um I think there is a very subtle one because I think it is covered by the fact that I talk about them being in the [Sub-Unit]'s custody and them being exposed to risk. So I think it is implicit in that.

N1788 agreed that, as per the APU's perception of the circumstances, the “*concept of 'custody'*” should have been taken “*extremely seriously*” by the Sub-Unit.

The TTP Review – Subsequent Action taken by DSF

N1788 could not recall specifically the extent to which he was involved in discussions with DSF and N1786 about the review. N1788 thought it could have been part of a wider operational briefing that was given to N1802. N1788 could not recall specifically speaking to N1466 but, by the time N1788 returned to the UK, there was agreement with N1788 and N1786's TTP Review report. N1788 did not think discussions about the TTP Review report were ever of the nature of saying “*N1141 and his team lost control of detainees on target*”, but it was implicit in what was found.

N1788 was then referred to an email from N1786 sent to him and N2444 on 20 April 2011 (MOD-221-0012393-A), the deadline date by which he was due to return the report. N1788 confirmed that he did not know whether he received the email on the day it was sent or whether N2444 received it first and N1788 picked it up on his return. There was a suggestion in another email that N1788 got to this email on 26 April 2011. On 26 April, N2444 wrote to N1466 sharing the TTP Review and relevant documents, highlighting that DSF first got sight of the report on 21 April (MOD-221-0012392-A). The email detailed that N1788 would ‘*pop up and brief*’ someone, whom N1788 inferred to have been N1466. N1788 imagined the ‘*briefing*’ would have involved him sitting down in a chair with N1466 and discussing the report with it in their hands. During this briefing, N1788 did not think he would have explained the outcome of the Review as being that N1141 lost control of detainees on target. However, N1788 thought “*the inference, the import of needing to amend the TTP back to what it was etc. would not have been lost on him and I wouldn't have pulled my punches on that*”.

N1788 was then referred to an email he sent in response to an email sent by N1786 on 23 April 2011 (MOD-221-0012757-A). N1788 confirmed that as per this email, there was a specific meeting in DSF's diary for N1788 to brief him on the report but he could not recall this meeting.

N1788 was referred to the letter sent by DSF to N1786 dated 28 April 2011 (MOD-1980002063-A), which was likely prepared and sent after N1788's brief to N1802, and possibly even written by N1788. N1788 confirmed that when he referenced the Bravo being in Sub-Unit 1A's custody, it may well have been to this draft that he had an eye. When asked what was meant by ‘*tempo*

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and the pursuit of operational statistics must be tempered with an understanding of long-term effect’, N1788 explained that this referred to the balance between mission success (i.e. going after priority targets, Taliban leaders and IED cells) against the long-term validity and viability of the partnering construct and the abilities of the APU to take over that role in due course. “So it is balancing the strategic long-term against the immediate desire to get after these cells and reduce the threat, in the first instance, to coalition forces.”

N1788 confirmed that the amended version of the letter, sent by DSF, was reduced to one page and was either the work of others or solely DSF himself. N1788 confirmed the two versions of the letter had slightly different introductions and the question of custody, which was touched upon in one line in N1788’s draft, appeared front and centre in DSF’s; DSF considered the issue of custody to be something that should be grappled with immediately by the Sub-Unit. N1788 agreed that it should not need spelling out that personnel who emerge and are held “*at gunpoint are de facto under [SU1A] custody*” and that it is the Sub-Unit’s “*legal obligation under the Law of Armed Conflict to ensure they are protected*”.

Q I mean, you having done your review and having focused on the loss of control, were you surprised that the DSF had to set out such basic, fundamental legal obligations to someone as senior as the Commander of SFHQ(A)?

A I mean, you are right to say that these things shouldn’t need stating, but I don’t think there’s, you know, given everything that’s gone to date, I totally understand why DSF did that. He’s being absolutely unequivocal and for the record making sure that everyone understands and that it’s coming from him, the Commander.

Q I mean, for the Commander to remind people of their legal obligations and the potential consequences of not abiding by them is a very stark warning, is it not?

A Yes, I think so.

N1788 agreed that N1786, N1141 and members of the Sub-Unit might feel like DSF was telling them off with this letter. N1788 confirmed that DSF identified in one page the key issues as he saw them which were to abide by the law at all times and that when people were detained, they were in UKSF’s custody and care. N1788 agreed that DSF set out the reasons why integration with the APU was important, for many of the same reasons N1788 had identified as being important.

N1788 agreed that DSF’s sign-off in his letter referring to an ‘*instigation of a cultural shift in the thinking of our personnel*’ was a clear message to N1786 and those under his command that there had to be a change of approach. N1788 went on to say: “*I think he is particularly talking about in some ways ironically one of the reasons... there is something that sits in the heart of the unit’s rivalry here and one of the things that UKSF1 prided themselves on was the tempo of operations they, they brought to a specific task or area and I think, I mean, if I did indeed draft that, that is sort of cut and paste, but it is this point that your pursuit of, you know, the immediate tactical mission success cannot come at the cost of our relationship with our Afghan partners and put in jeopardy the long-term success of the campaign*”. At the micro level, N1788 agreed it could be difficult to take a step back from the impact the high tempo had but at the macro level, either at N1786 or DSF’s level, it was possible to have a wider perspective on the impact

of the pursuit of tempo. N1788 confirmed DSF's recommendation for a cultural shift in the thinking of UKSF meant that everyone needed to take a step back and, rather than driving forwards making sure that the DDOs happen as often and as hard as possible, also needed to have an eye to whether that would achieve the ultimate goal.

Letter dated 20 May 2011 with Final TTP Report and Operational Examples

N1788 was referred to a letter dated 20 May 2011 and the proposed changes to the TTP that were suggested (MOD-198-0002063-A), acknowledging that the first of the changes to the TTP was to make sure the Afghans returned into the building voluntarily and to make sure that they were restrained.

N1788 agreed that consideration was given to changing the pre-deployment training of the Sub-Units who were due to go out so that the original TTP was the one to be used, clarifying that the evolution of the TTP took place in theatre rather than training. The evolved TTP never formally became part of the pre-deployment training.

Q And the only difference as you understood it between the deployed TTP training, which was the one you used, and the evolved TTP used by [Sub-Unit 1A], was that you had sent in restrained individuals who therefore would have found it harder to arm themselves, whereas [Sub-Unit 1A] sent in unrestrained individuals.

A And we covered them from the position of strength at the [access point]. We didn't then follow in with them, so we gave them more space to do what they needed to do, secondly and, thirdly, we didn't expect them to do other tasks such as assist in searching.

Q I mean, if accurate, it is clear from the OPSUMs that [Sub-Unit 1A] not only sent in escorted unrestrained males, they sent unescorted unrestrained males into the building.

A Yes, yes.

Q So in fact they compounded their initial error.

A Yes, yes, in some ways, yes.

Q In the sense that there is an even greater loss of control there, does that surprise you that that situation was allowed to develop?

A So if you are coming at it from my perspective, yes. If you are coming at it from a different perspective with different tactical priorities, perhaps not. That does not make it right, but I am just saying it depends on which perspective you take, but from the one I was coming from, the one I was used to, the one I had operated under, yes.

Q If this was simply the [Sub-Unit] losing control because they had allowed a TTP to develop that was, on reflection, ill-advised, why might the senior legal adviser for UKSF have offered advice to [N1466] in which he said "It's arguable that Service offences have been committed when you look at these together".

A Because I think it's this point of custody. You are putting someone who is in your custody in a position of jeopardy. They are reacting, you're reacting to it and therefore that presumably, depending on the intent of whoever, you know, shoots or whatever, could breach the Law of Armed Conflict.

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- Q Well, how might it be a Service offence if, as you have said, your understanding was they were responding on Card Alpha to the threat posed to them?*
- A Because you're, just because the, at the point of shooting it is 100 per cent "I perceived a threat and I dealt with it". You could be perceived, as I think we have just discussed, that you put them in that situation.*
- Q Allowing somebody an opportunity to pick up a weapon which they can then turn on you and try to use, that is not a criminal offence, is it? How is that an offence?*
- A Because they were in your custody and you were supposed to protect them. So I don't think it's an offence at the point of shooting and I'm not sure it does breach ... well, I think it's, as we've already discussed, it's on the cusp of that LOAC point about it is your duty, it is your lawful duty to protect people in your custody.*
- Q The Service offences that were highlighted in the advice from [N2108] to [N1466] did not talk about a breach of a duty. What they identified was murder and manslaughter.*
- A Yes.*
- Q At any point did you think to yourself "Why are we talking about murder and manslaughter and Service offences when this is all to do with custody and care and control"?*
- A No, I think [N2108] in that email lists them as the sorts of things that the Law of Armed Conflict makes reference to, but I mean, he, [N2108], to be clear, never came forward, as far as I'm aware, and said "I think someone, I think there is a murder or manslaughter case to be answered here" and nothing I saw in theatre talking, you know, reading the OPSUMs or talking to the individuals involved suggested otherwise. There was no evidence, no one came forward, no one had a different version of events that suggested one of those laws had been broken. Indeed, it was not the purpose of the review in the first place. So nothing had changed in that respect at the end of the review to the beginning of the review and I am sure that is how [N1786] saw it as well.*

A Third Party Entity's ("TPE") Complaints and Allegations against UKSF

N1788 was not aware that a TPE had raised allegations of EJK against UKSF. He was aware, after his review, that this TPE had major concerns over the use of the TTP and the point of duty of custody and care towards detainees but balanced that by saying they were pleased that the Sub-Unit was seeking to protect the local Afghan population. N1788 was also not aware of the APU's allegations that people had been shot whilst running away and that there had "*been assassinations on target*". N1788 had expected a more visceral response from the APU when he spoke to them; in fact, N1788 thought the APU was sympathetic to Sub-Unit 1's needs and none ever made any accusations of murder, EJK or the inappropriate use of force.

N1788 confirmed that as per his statement to the Inquiry, he did not recall having direct contact with this TPE and that he was made aware of the concerns raised by the TPE in so far as he was a recipient of the correspondence. CTI referred N1788 to an email from N889 to N2108 and N2444, copying in N1788 in May 2011, which post-dated the TTP Review and the recommendations, in respect of Objective TYBURN (MOD-198-0003437-A). N1788 confirmed that Objective TYBURN was one of the Objectives that caused consternation with the APU in February 2011. N1788 confirmed that this TPE's allegation was one of serious

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criminal wrongdoing, that a man was seen to be ‘under control’ by being handcuffed and led into a room but was later found KIA, inferring that he was shot out of hand.

N1788 was referred to an email received by N889 from N5462 that sought to ‘nip’ the allegation in the bud before it became an official allegation (MOD-198-0003437-A). N1788 appreciated the seriousness of this allegation as something that he was recently made aware of rather than from his recollection at the time. With regards to this TPE’s complaint, N1788 recalled “*it sort of morphed into something else about custody and about sending males back into the rooms itself, this was a retrospective in some ways about something that, forget the specific allegations here, would have been deemed to have been dealt with under the Terms of Reference of the TTP Review itself. What I will say is this was not abnormal. Either from the Afghans or through [a TPE], I was, I have been subject to many descriptions of um having been involved with killing Afghans out of hand whilst they were in my custody. So that in and of itself, don’t get me wrong, serious, but I’ve seen that many times, yes.*” N1788 confirmed that the fact that something had been seen many times obviously does not reduce the seriousness of that potential allegation.

N1788 explained, drawing on an example from his personal experience, that simply because a TPE raised an allegation, that allegation would not necessarily be referred to the Service Police. N1788 agreed that they may have wanted to test the evidence before a decision was made as to whether a Service Police investigation was appropriate. In terms of the email from N889 forwarded to N2108 and N2444 (MOD-198-0003437-A), N1788 agreed that this was a potential issue which engaged Campaigns and Legal and it was shared because there was a question of whether or not an offence may have been committed. N1788 agreed that N889 shared this email to get N1788’s advice because he was responsible for inputting on the DDO elements, but also that this was a TPE complaint so N889 was seeking national advice on what to do next. ISAF Headquarters bore the brunt of this TPE’s questioning, hence why N5462 in Task Force Helmand was requesting further information about this. N1788 could not recall whether there was a conversation about this, but having read the background information, Commander ISAF and a senior Afghan Official, N2132, were briefed on the unit investigation.

N1788 was referred to the email from N2108 responding to N889’s email (MOD-1980003437-A). N1788 explained that he thought, by putting ‘*releasing something a bit more than the usual ‘it’s not true’*’ in his email, N2108 was being a little bit cavalier and using a turn of phrase. N1788 did not think this TPE would “*just accept you saying “it’s not true” and then moving on*”. When asked about N2108’s concern that if a complaint escalated there might be pressure for an SIB investigation and whether there would be any problem if there was an SIB investigation, N1788 responded that in his experience “*absolutely not*” and that he himself had been subject to many. N1788 agreed that it might interrupt the smooth operating of the Sub-Unit which was something DSF was concerned about in due course, but that it was not itself a problem.

N1788 was then referred to the part of N2108’s email that considered it important to let this TPE know that an individual was ‘*under control but was later allowed back in*’. N1788 explained that N2108 probably wanted to give that information because he was trying to balance saying precisely what happened without giving too much away about the TTPs. N1788 acknowledged that there was always an operational security aspect to disclosing the TTP to a TPE. Whilst N1788 agreed that only a few weeks before this email he had considered it was

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possible even the Taliban worked out what the TTP was, there was a “*precedent set into all of this and the degree to which you want to create an expectation [in a TPE] that they have access to your every TTP*”.

CTI referred N1788 to a letter sent in May 2011, from N2108 to DSF, copying in N1788 (MOD-198-0002033-A). N1788 confirmed that he was copied into the original email together with N2444 and was one of the identified recipients of this letter addressed to DSF. N1788 did not think that was because the engagement with this TPE involved him and his Campaigns team as they did not usually talk directly to TPEs, but they might have been responsible for collating information that then went through other bodies. As to the way N2108 described the TPE’s allegations, N1788 agreed that N2108 described them in as stark terms as those reported by N5462 to N889. N1788 explained that the aspiration to deal with the complaint at the lowest level could have arisen to avoid prolongation of the issue and to prevent more work. N1788 did not think that what was being said was that the desire to avoid an SIB referral was to avoid too much examination of what happened. By ‘*nip it in the bud*’, N1788 thought N2108 was trying to deal with it at a level that he thought was appropriate. N1788 did not want to speak on N2108’s behalf but he did not think N2108 was “*trying to hide anything here*”.

Turning to an email from DSF to N2108 dated May 2011 (MOD-198-0002047-A), the day after the briefing note was provided. N1788 confirmed he was copied into the email and that N1802 requested to know when the TPE meeting was scheduled and not just the outcome. N1788 agreed that this was because N1802 had a keen eye for detail and wanted to be in command of what was happening, which N1788 thought was appropriate as it was an allegation made by a TPE. N1788 explained that, other than for the purpose of gathering intelligence or information that might be needed, the Campaigns team would be copied into emails by the DSF to N2108 relating to this TPE because they would have been the principal source of gathering information. N1788 confirmed that the Campaigns team’s role did not just include the review of what was happening in theatre and keeping the Tracker, but also the provision of information from theatre to others in case problems needed addressing. Anyone that wanted to know what was happening in terms of operations in theatre would come to N1788 and his team, as subject matter experts and because they had the principal route into the Staff Officers and the Chain of Command in theatre to ask questions and had immediate access to all the OSW.

Email chain from May 2011 – Readout from TPE meeting

CTI then referred N1788 to an email dated May 2011 that provided a readout from the meeting with the TPE (MOD-198-0000328-A). N1788 agreed that as per the readout, N2108’s assessment of the meeting was that it seemed to have gone quite well. N1788 agreed that after the TTP Review, the detained individuals’ compliance with instructions and reactions to members of the Sub-Unit would not really be a problem because you would only use someone who was compliant to go back inside; that person should be restrained and they should do no more really than open curtains and doorways. They were not part of a search or clearance operation. N1788 did not think it was deliberate that the passage taken by the male through the compound was observed for a threat indication but stated that certain actions by the detained individual could be potential indicators of a threat.

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Q ... At any point did you consider that that might be what was happening, that people were being engaged by way of a “manufactured self defence scenario”?

A No, because there was no evidence to support that.

Q Is that because neither [N1141] nor any member of [SU1] had said that had happened?

A Correct and there was no, no dissenting voices to that.

N1788 agreed that N2108 repeated the language of the TTP Review in which N1788 attributed the loss of control of the Afghan male to the insurgents’ reaction to the UKSF TTP, rather than UKSF’s conduct. N1788 said it was not possible to tell which other Sub-Units in SFHQ(A) would have known the outcome of the TTP Review. N1788 then confirmed that N2108 emphasised to the TPE that it was not just about UKSF but also about individuals on target; there was an element of protecting the detainee. N1788 confirmed that this TPE’s complaint was also in respect of the TTP used in Objective 9 and Objective TYBURN. N1788 confirmed that N2108’s correspondence was sent almost a month after the TTP Review was concluded and a month after recommendations were adopted by DSF and sent out. N1788 described this as a “turbo lag” between the TTP Review being completed and a TPE making a complaint about the operations. N1788 did not consider there to have been reason for not telling the TPE that a TTP Review had taken place as there was no secrecy about a review of that kind having been carried out. N1788 was not sure why this TPE were not told about the TTP Review but N1788 did not remember much about it. N1788 explained that, in response to this document, “*whilst it is a very serious allegation, I thought it was retrospective and that we had dealt with it, which may be why, you know, I specifically didn’t make that point or maybe I did informally, I don’t know, but I don’t remember this being an issue per se*”.

CTI referred N1788 to an email dated July 2011 and timed at 12:51 from N889 to several individuals, including N1788 (MOD-198-0002051-A). In this email, N889 set out the points raised by the TPE in the meeting. N889’s email referenced two reviews of the TTP that had taken place, which N1788 confirmed to be his review and N1189’s review. N1788 was never provided with the product of N1189’s review. N1788 considered he was being emailed by N889 about the TPE meeting in July because of a communication issue, in that despite what had gone on previously “*this thing still hasn’t been put to bed*”. N1788 thought that although it referenced the same operations and the same issue, it had been escalated and it was now ISAF HQ dealing with a TPE’s general complaints.

N2108’s response to Chief of Staff SFHQ(A) in July 2011, copying in N1788, referenced the TPE’s mention of ‘high kill stats’ and asked what that was based on (MOD-198-0002051-A). N1788 was not aware that the TPE was concerned specifically about the ‘kill stats’ from UKSF and did not remember discussing the ‘kill stats’. When asked whether he remembered discussing 'kill stats', N1788 responded: “*No, I don’t, but I’m just surmising that this is still though talking about an époque that had gone previously in advance of the TTP Review and, again, I’m surmising that, you know, [N2108’s] references to “nipping it in the bud” didn’t “nip it in the bud”, hence why it is now at a higher level, but it doesn’t feel like any of the issues or facts have changed.*”

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CTI referred to N2108's email dated 1 August 2011, into which N1788 was copied, regarding the TPE's concerns about the use of the compound clearance TTP on Objective TYBURN and Objective 9. N1788 could not recall whether N2108 spoke to him about these reported concerns, but he thought it was highly probable that he would have done. N1788 agreed that as Head of the Campaigns team, if there was a discussion about a TTP or a DDO, he would be the person to go to. N1788 could not recall whether N2108 discussed with him, as the author of the TTP Review, whether a further review of the TTP should be carried out. N1788 recalled there being confusion around this time as DSF was exercised by this issue, not because it was anything new but because this TPE was pressing the case and he was concerned. N1788 recalled N2252 being involved and *"there being a degree of, you know, what one might term, you know, expectation management on this, i.e., this predates the review, we have done the work, it is now a case of packaging it and making sure people understand, "Yes, we can re-review the review, but ultimately we believe this is an issue that has been done with" and it was more about managing people and perceptions rather than changing the TTP because, after the TTP Review, I think the statistics speak for themselves in terms of a continuing trend of EKIA on target etc., i.e., they fell away precipitously."*

N1788 agreed that if the Head of Legal for UKSF strongly advised that another internal UKSF review exercise be carried out in respect of the TTP, it should be given consideration. However, N1788 did not think that advice should be obeyed *"because the lawyer says so"*. N1788 did not know whether he prepared a briefing note for DSF on the meeting with this TPE or complaints raised. N1788 could also not recall, either in a briefing note or in any meeting with DSF, whether they discussed the possibility of a further and possibly third review of the TTP. N1788 thought that if that had been the case, it would have been a much more informal affair than the TTP Review, mostly to confirm the conclusions of the TTP Review and DSF's letter. N1788 did not think there was evidence or activity to suggest his review had not had the desired effect because the complaint referred to events prior to the review taking place. N1788 thought there may have been another scrub to brief DSF that they were content and to ensure N2108 was content. N1788 commented *"but what I'm absolutely convinced it wasn't was another root and branch review like the TTP Review"*.

CTI referred to N2108's email from 1 August 2011 in which he referred to the potential for *'more of a legal health check/possible refinement in light of legal concerns'*. N1788 recalled there being that health check conducted by N2108. N1788 thought it was inconceivable that either he or someone in his team would not have gone back to his TTP Review with N2108 to look at the recommendations and the findings to compare and contrast that with what this TPE was saying. *"We didn't just ignore these things"*.

CTI referred to COS SFHQ(A)'s email to several individuals including N1788 and N2108 that referred to Sub-Unit 1 doing *'a further internal review last month'*, which N1788 confirmed could not have been N1189's review in April or N1788's own review. N1788 thought this further internal review was that of the Chief of Staff SFHQ(A) and agreed that a number of different reviews were going on around this time, but that his was primary. N1788 considered his review to be primary because it involved him going out and interviewing a lot of people.

Q But, having conducted your interviews with these people and spent your time in theatre, in any way did you share the argument that [N2108] posed in his advice that, looking at the matters in the round and all the DDOs together, some people might conclude that Service offences had been committed?

A No, and I don't think he was saying that. Sorry, I don't think he was saying that; I think he was saying, bearing in mind the low bar we are talking about here, people need to be careful, people could perceive that to have been the case, but I didn't ever interpret that as that is what has happened, no.

Q In any way was your visit to theatre intended to be a message from the DSF that what had gone before had to stop and had to change?

A I don't know what his specific intent was in that regard. He was very clear to me or the Terms of Reference were very clear to me about what they wanted to happen. It could well have been that part of that was making a point um and, if so, I think he made it, but I see the legal issue of this as separate. If you want to have, you know, if you want to have a Service Police investigation, then have a Service Police investigation; if you want to talk about TTP reviews, then have a TTP review. The two certainly aren't mutually exclusive.

CTI referred to an email sent by N2108 to N1788 and likely N1466 from September 2011, in which N2108 referred to his 'take away' from Op Y and a failure to get the message through to SFHQ(A) (MOD-198-0003644-A). When asked what the message was that failed to get through to SFHQ(A), N1788 responded:

A I think it is the point of the original TTP Review, that when you take someone into custody they are in your duty of care. In this case, it is a different situation in that you are not sending someone back into a compound, you have detained someone and you are then advancing to contact effectively across the road and you are taking him with you. So you are right, he is still in your duty of care and by moving him with you, you have, you know, potentially kept him in danger or put him in jeopardy, but it is not the same situation as sending someone back into a compound. So I think his point is, on the custody point that DSF made in his letter after the Review, perhaps people are not understanding that it applies to every scenario rather than just the compound scenario or, again, it could be the message has got through for [SU1] but not [SU2] bearing in mind they weren't the original focus of the TTP Review, they are oblique to it.

N1788 explained that everyone was aware the TTP Review was focused on Sub-Unit 1, but that it would not make any difference who you were, you were still bound by the same responsibility. N1788 agreed that the cultural shift in thinking needed to ensure that there was a recognition that anyone detained was in custody and that there was a duty of care owed to them.

N1788 was asked about N1466's view that criminal offences were being committed on target.

Q [N1466] gave evidence to the Inquiry, both in his statement and in his oral evidence, that he had reached the view that criminal offences were being committed on target,

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and he was very clear of that opinion in his mind. At any stage did he share those concerns with you?

A No, and his letter that I subsequently saw at the beginning of the Inquiry, that makes very clear and, you know, totally explicit those concerns were not something we were aware of at that time. So, no, he was very careful to couch all of this in terms of the TTPs and a non-partisan, you know, view of what was going on.

Q You certainly knew that he was seeking help from you about the statistics?

A Yes.

Q And from SOI Legal about the legal implications of what might be happening?

A Er yes.

Q And that he was gathering that information to advise the DSF on how best to proceed?

A Yes.

Q Which ultimately led to the unprecedented step of you being sent out as a Staff Officer to conduct an assessment of what those on the ground had been doing?

A Yes.

Q And there must have been an intended message behind that if not simply a review, that message being that there needed to be at the very least a cultural shift in thinking from the [Sub-Unit]?

A Er yes, I think that's fair.

Q And an urgent need to remind everyone of their legal obligations that they owe to anyone who is detained on target?

A Yes.

N1788 then answered questions about an alternative method of compound clearance.

Evidence concluded.