

## **INDEPENDENT INQUIRY RELATING TO AFGHANISTAN**

### **SUMMARY OF N5461'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 N5461, 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.

**N5461 was questioned by Counsel to the Inquiry, Kerry Broome, in a CLOSED hearing in Summer 2024, over approximately one day. The following is a summary and, where possible and relevant to do so, a transcript of sections of N5461's evidence, with any sensitive terms redacted and replaced with a gist or cipher in square brackets.**

**N5461 was asked about a series of emails exchanged between colleagues in February 2011 in which they discussed information contained in operational summaries ("OPSUMs") for two deliberate detention operations ("DDOs").**

N5461 confirmed that his two witness statements to the Inquiry, the first dated 24 January 2024 and the second dated 22 May 2024, should stand as part of his evidence.

CTI commenced by taking the witness through the key aspects of his military career, to assist and place in context the evidence to be given. This included sensitive identifying material and material that is operationally sensitive that is relevant to the evidence that followed, which cannot be gisted.

N5461 set out his prior deployments to Afghanistan in the mid-late 2000s. During one prior deployment, not with UKSF, N5461 had contact with the local population, including insurgents. The insurgents' motivations were clear; they wanted to get rid of the foreign forces in Afghanistan. N5461 got a clear sense that the foreign forces, NATO initially and then the British, were going about business the wrong way, by which he meant they were "*very kinetic*". He saw a lot of violence in certain areas, which did not "*win...hearts and minds*".

During another deployment, N5461 had direct experience of conducting DDOs as a Sub-Unit (Minus) ("SU(M)") Commander with UKSF3. N5461 described two types of missions the Sub-Unit conducted: kill/capture missions and non-DDOs. During this deployment, N5461 performed two separate roles. His first role was to advise the Commander Task Force Helmand of what they were doing -

*“Essentially, if you are going to go and do a [non-DDO] in someone’s battlespace you have to tell them about it, otherwise it causes a lot of mess.”*

His second role was to conduct the non-DDOs.

CTI questioned N5461 about what he meant by ‘kill/ capture missions’. N5461 responded:

- A *So you would have... intelligence ... and then you would go and detain an individual and anyone who appears with them.*
- Q *And the point of the operation, was that to detain the individual?*
- A *Um yeah. I mean, that was, that was ostensibly what we were trying to do. Not a lot of good came from it, I think. With the detentions we sort of saw them go back out to the battlespace quite quickly.*
- ...
- Q *You have got the... intelligence ... and you went out. As you went out, what was the intention of the mission at that stage?*
- A *To capture them or kill them if they resisted it and often you had Rules of Engagement which meant you could put a lot of overwhelming fire power in so often there wasn’t a lot left by the time you got there anyway.*
- Q *So you “put [in] a lot of overwhelming fire power”.*
- A *I personally wouldn’t. That would be the Ops Room job to do that to protect you as you go on, onto target.*

N5461 explained that the fire power would most often be provided by air assets.

When asked by CTI about at what point a mission would become a kill mission, as opposed to a capture mission, N5461 said:

- A *Well, if there was, if it is a raid, then it will be a kill mission if it became overwhelmingly threatening. We never went with the intention to kill. There was no head count.*
- Q *Right.*
- A *You are never going on target and saying “Right, we’re just going to kill him”. The idea was always to detain.*
- Q *Okay.*
- A *So often we would come off with a number of detainees.*
- Q *... So it would only become a kill mission, from what you are saying, if the circumstances presented.*
- A *Yes.*
- Q *And under what Rules of Engagement were you operating at that stage?*
- A *We would be under [Rules of Engagement (“ROE”) XX] throughout the operation. Now I can’t recite that to you verbatim today, but ...*
- Q *And is that ----*
- A *In [ROE XX] quite a lot of, a lot of activity, so you could see the threat to you and you could engage them.*
- Q *And was that on a detention operation ----*

A *That would be on a detention operation.*

Q *-- as far as you remember?*

A *Yeah, that would be a detention operation that turned into a kill operation because it became too violent.*

Q *And when you say "because it became too violent"?*

A *Well, if it was, if there were um, you know, if there was a threat posed to life, then you, then you would have to resolve it.*

During N5461's time as SU(M) Commander, N2107 was his Officer Commanding ("OC"). N5461 said that he did not carry out many DDOs during this period. On some of these operations, the Sub-Unit partnered with Afghan units. CTI asked N5461 what his working relationship was like with the Afghans whilst on deployment in the late 2000s. N5461 thought that they rarely brought the Afghans in to discuss with them at that time, although he was a bit shaky on memory as he could not remember them being present. N5461 recalled one operation when they were present to provide interpreting skills. N5461 did not have a working relationship with them because he was not required to in his particular role.

CTI then questioned N5461 about the mechanics of detention operations, including call outs and clearing the compounds. N5461 explained that during a DDO the focus was detaining relevant individuals. UKSF3 would also look for evidence to support the intelligence and detention, by for example, undertaking sensitive site exploitation ("SSE") and taking photographs. N5461 explained he had limited understanding of SSE at that time.

When asked whether at the time he was aware of using an Afghan male to go back into the compound and search the rooms ("the TTP"), N5461 said:

A *I don't think we were ever, I don't recall that, Sir, no I don't recall that TTP, Sir, using that TTP. That wasn't something we would have done.*

Q *Or being aware of it at the time?*

A *I don't, I don't recall ever sort of discussing that as something that we should do, but then, as I say, I don't recall ever being particularly interested in the physical, you know, what was on the target. I think, as I say, we were mostly interested in the bravos themselves and, you know, searching them, [conducting SSE and detaining the most important suspects]. That's the decision you're looking for, not "Can we go and find some stash of grenades which is rife or, you know, some more AKs". They're all over theatre. We're not, we're not interested in that. We're interested in those two people, Sir.*

N5461 also confirmed that he did not recall the use of a bravo to 'clear' a compound.

At the time of the relevant e-mails in February 2011, N5461 was employed as part of a UKSF coordination role based outside Afghanistan which included supporting SFHQ(A)'s role in Afghanistan. N5461 provided further details about that role which cannot be gisted.

In this role, N5461 had weekly correspondence with SFHQ(A) and also visited SFHQ(A) in Afghanistan. The engagement N5461 had with SFHQ(A) included informal conversations,

access to formal operational staff work (“OSW”) and a regular video teleconference in respect of one part of his job.

N5461 explained that he was on “*routine distribution*” for post-operational reports relating to Afghanistan, even though they were not directly relevant to the role he was undertaking at the time. This would include OPSUMs and Storyboards but not CONOPs (“Concept of Operations”). He did not recall if he saw routine SITREPs (“Situation Reports”); if he wanted to he could have looked and he may have done. The purpose of being sent this paperwork was to assist with his role. “*So it was just about immersing yourself in [SFHQ(A)]’s output and aims really; what they were achieving and how they were achieving it and what they were up to.*” N5461 explained that he would not spend a great deal of time on them, because they were all fairly similar.

When asked about his relationship with Sub-Unit 1 (“SU1”) and UKSF1 in 2010, N5461 recalled it being friendly but explained that “*everything [he] would have received operational staff wise would have been from [SFHQ(A)] on ... a formal basis.*” N5461 was friendly with some of the officers and seniors in SU1C.

CTI then asked N5461 about the relationship between UKSF1 and UKSF3 in mid-2010 into 2011. Speaking generally from a UKSF3 perspective, N5461 explained that relations could be quite fraught, although this was less prevalent within N5461’s generation, who were brought up on joint UKSF training, and had therefore had a greater opportunity to build bonds. On a personal level, N5461 did not have any difficulties with UKSF1 but he made the point that relations between the two had to be viewed in the context of UKSF1’s huge land grab in setting up SFHQ(A), which inevitably caused friction.

A ... *there is a very big cultural gap between the two organisations I think in the way, the way they conduct themselves, but, you know, there is nothing sinister there. That there is a cultural gap between [two British Military Units]. You know, I don’t know about at the moment but in a joint organisation. It’s just recognising that people have different outlooks.*

...

A *I do remember the Chief of Staff at [SFHQ(A)] at the time pulling me aside and saying “Hey [N5461], you know, we’ve got to make sure that we’re speaking with one voice here” and I remember nodding along to him, but I don’t think I needed that explained to me. You know, I knew that already.*

...

Q *And when he said “We are all speaking with one voice”, what did you understand he meant by that?*

A *I think he probably perceived the friction between the two, the two groups. You know, he sort of, he probably said the right thing, trying to bring me on and saying “Hey, you know, we’re all one team here” and I just “Yeah, I think we all are”. I found, yeah, so I don’t, I don’t know where the frictions were coming from. I didn’t, I didn’t perceive them and I didn’t perceive them talking to my team either.*

N5461 described his Sub-Unit Commander as ambitious and being aware “*that he had to play nicely with [UKSF1]*” as bickering with colleagues would not have supported his career progression; “*... that’s where the success lies. You know, you’re not going to go onto greatness if you are just bickering with your, with your colleagues.*”

CTI directed N5461 to an email he was copied into dated 9 February 2011 from N2107 to N2349 (MOD-198-0002064-A). The email provided the OPSUM for Objective 2. CTI read from the body of the email which described eight EKIA and four armed males. In the email, N2107 provided his own observations on the use of the TTP in relation to this objective. N5461 stated that he did not recall receiving this email at the time, and had he not seen that he was copied, would have said he had never seen it, but that the last sentence, which read ‘*whilst murder and [UKSF1] have oft been regular bed-fellows, this is beginning to look bone*’ “*does jump out at you*”.

When asked by CTI whether he could recall being surprised on receipt of this email, whether this was the first time it had been raised or if it was something that had been discussed previously or that he was already concerned about, N5461 responded:

A *Um I, I don’t remember receiving the email. I just, the line is, you know, it’s quite an abrupt line, so you would, you would, it sort of falls into place a little bit, but I don’t remember specifically receiving the email. I think there was probably a conversation at the time in the office because I was sitting in the office with [N2107] for a lot of, a lot of the time, about what might be happening there and so the questions he is asking were probably, you know, these weren’t new questions to me and so when I write about them I think a couple of days later, it is probably reflective of the same conversation.*

Q *So, as far as you are able to recall, this is a conversation that had been going on around the emails?*

A *To be clear, the “murder and [UKSF1] have oft been regular bed-fellows” isn’t something I would have had a conversation with [N2107] about, but the ---*

Q *No, I meant in terms of the bravo being sent in.*

A *Yes, yeah, that was, I find it, you know, I don’t remember what we talked about and when and what have you, but I find it impossible that I would have just crafted that email on that very day that I read that one OPSUM. So it wouldn’t, it wouldn’t have been just a gut response, it would have been something that I had thought about for a few days. So this would have been part of that, of my thought process, I would have thought.*

Q *So this is 9 February, so it is about five days ---*

A *Five days.*

Q *-- seven days before your email.*

A *Mm mm.*

Q *Do you remember, and as I said I appreciate that this is a long time ago, but do you remember whether this was surprising to you and whether this was the first time it had been raised or do you think there was a conversation prior to this email?*

A *I don't remember, no. I don't remember how many OPSUMs there were that we, that caused this conversation and when they started, because obviously I am commenting on one on the 16<sup>th</sup>.*

Q *16 February.*

A *Yeah, so I um, you know, that's not, as I say that's not an isolated incident I'm confident because you read them, as I said earlier, you read them all and they all say the same and they all blend into one, but actually there is some, there is a pattern now starting to emerge where you start seeing some activity which you don't really understand and so there would have been a conversation around that for, I don't know, what, ten days beforehand. I don't know when, I don't know when the pattern started to emerge.*

Q *But it seems by at least 9 February ----*

A *Yes.*

Q *-- there is a pattern because [N2107]'s words are:*

*"I find it quite incredible the amount of B[ravo]s that [SU1A] sent back into a building ..."*

A *Mm mm.*

Q *So indicating to the readers that this has happened at least more than once, but "the amount of Bs" suggests that this has become relatively frequent. Would that be fair?*

A *Um, um I, I don't know how I would describe it because I just don't know when I started reading it and thinking in that, in those ways, but the gist of what you are saying is correct, yeah.*

CTI referred N5461 to the email N2349 sent to N2107 in response (MOD-198-0002064-A). Noting that N5461 had not been copied into this email at the time, CTI asked N5461 whether he remembered anything about the comparison of kill rates in 2011. N5461 responded:

A *No, I don't specifically remember anything about that. I mean, I think I was, um I mean, but that was a constant theme, right? So that was, you know in, I think, you know, not conflating different parts of my memory, but you know that wasn't exclusive to [SFHQ(A)] at the time. It was Task Force Helmand as well. We were counting the number of insurgents that were killed as success. So it was a um, you know, that's not, I've lost my point. So I think er I would have been aware that people were using kill rates as a metric of success.*

CTI referred N5461 to (MOD-198-0002877-A), an email he received on 16 February 2011 providing the Objective TYBURN OPSUM and Storyboard. CTI read out N5461's reply to this email which was sent to IIA41, copied to N2107 (MOD-198-0000333-A). N5461 explained that he copied N2107 into the email because he would understand the subject and have the authority to influence UKSF3's response.

CTI asked N5461 what he was trying to convey with his response.

- Q ... If we start with the “beginning to adopt the previously unobserved TTPs”, what did you mean by that, please, [N5461]?*
- A That we didn’t know, we hadn’t seen this behaviour of ... I found it very interesting that the Taliban were, well I don’t know whether they were or whether they were Taliban or whatever, but they were going back into buildings, or being allowed to go back into buildings, and pick up lethal material and that was something that I’d never seen before and it seemed unusual because I didn’t, I didn’t know. Well, I’d not seen it and we had never been trained to, to observe, to be ready for that.*
- Q Why did it seem unusual to you that they would go back in or be allowed to go back in and pick up weapons or grenades?*
- A [N5461 described the procedures for detaining individuals whilst on operations on the ground, including the cuffing and blindfolding of detainees. If the decision was made not to take a detainee off target, they would be released when the Sub-Unit determined it was safe to do so]*
- Q But you would always be making, from what you have said, always making sure that it was safe to do so and that they could not present a threat to you and your colleagues?*
- A And if you did release them, sorry actually if you unbound them, you would not just let them walk off, wander off, you would keep an eye on them.*
- Q And so you did not use that particular TTP, as you said, of using a male to go back and either assist with the clearance or assist with the search .... Was that in and of itself unusual to you?*
- A Um I don’t remember all my thoughts at the time, but I don’t know why you would because, as I said earlier, we were interested in the individual and the [target confirmed] is achieved usually by [conducting SSE] and if all the evidence is right there in front of you, that’s what you need and removing, you know, I don’t know what they’re looking for, I don’t know why they, what they hope to achieve by putting people back into the building. So this is, I don’t understand why you would do that because you’ve got everyone out. You’d done the hard job. You’d done everything that is the hardest bit and now you’ve got everything, you’ve got everything under control, so why are you allowing yourself to lose control of that situation again? I don’t, I don’t know why you’d do that.*
- Q Well that was going to be my next question because, if there was a need to have a local national sort of member of the household to assist with [clearing] the compound, in your memory of compound clearances and detention operations, from what you have said about safety, would you think it quite natural to try and retain control of an individual during that process?*
- A Yeah, I mean I just kind can’t imagine a scenario where you wouldn’t have a weapon pointed at a very critical part of their anatomy with a safety catch removed at all times.*
- Q And ----*
- A So like, i.e., with a [weapon pointed towards them at all times]. You wouldn’t, just wouldn’t allow them to be outside your control in case they did anything you didn’t like and you would make it very clear that you would want them visible so that they understood that, if they did anything wrong, then they would die instantly. I mean, I just don’t know why you would ever lose control of someone like that, but, again, I was*

*never faced with the scenario where, you know, I've searched, we searched buildings but all the detainees were removed and we just wandered round and did what we wanted to do.*

*Q So if there was a justification for using a member of the household to go back in, so if there were any booby traps or IEDs ----*

*A Yes, absolutely, yeah.*

*Q -- them assisting in the search with you would allow you to ascertain whether there was an area perhaps that they were avoiding ----*

*...*

*Q -- or if there was anybody hiding, but if you were taking them back in, again, can you see any circumstances in which a member of a highly trained [Sub-Unit] should lose control of an individual in those circumstances?*

*A No.*

*Q And, if it happened once on an operation, what would be your understanding of what would follow, so a detainee becoming loose and presenting a threat to the [Sub-Unit]?*

*A Um er well, I don't know. I just remember, you know, losing control of a target during [the UKSF course], by which I mean I was on a, I was stacked on [an entry point] and I took my eye off the [entry point] for a second and the, the staff at the time was an [individual] and he made it very clear to me that I shouldn't ever, ever take my eye off the [entry point], and that's just [an entry point]...okay, in a joint training exercise. "If you ever take your eye off the [entry point], the lads will get you". You know, "Don't, don't do that".*

*So, if you ever escalate that to a situation where lethal force had been, force has been used and you take your eye off or lose control of something, because I lost control of the [entry point] for a split second and they have lost control of an individual for enough period of time for them to get hold of a grenade and then I don't think he got the chance to detonate it, but ----*

*Q But still.*

*A -- but yeah, I can't imagine that, but then I can't imagine the situation where you would ... you know, so a room clearance is exactly that. You've done your search of the room. You've neutralised all threats in that room and you've got what you want from that room and you have come back out..., so I'm not sure and I think Objective TYBURN is an individual rather than a weapon system or some such.*

N5461 was directed to the OPSUM for Objective TYBURN (MOD-221-0001417-A). The summary of the objective described the use of the TTP on two occasions resulting in two EKIA. When asked what he would have done if two instances of a detainee becoming loose and presenting a risk to SU1 had happened on his watch, N5461 responded:

*A I would be having a strong word with the lads. I mean, asking them to stop being quite so open to the risk, I think.*

*Q Because whatever the TTP and the efficacy of it, is it fair to say that something has gone wrong here on two occasions?*



A *Yes, I would, I would absolutely say that. I don't, I just can't see how you can lose control of a target or a threat like that is probably a way of putting it.*

CHAIR: *Do you mean you cannot see how they would lose control of a target once let alone twice?*

A *Absolutely, Sir. I think it is just, as Ms Broome said, it's just, it's why would you allow someone to, to pose a threat to you twice like that. You would just never allow that to happen and it's um, it's quite easy to intimidate someone by holding a [firearm] or whatever you prefer in those tactical circumstances, but you can scare, quite easily scare people into doing what you want them to do.*

Q *I can imagine.*

A *So you don't need to, there is no need to lose control of it in that way, Sir.*

Referring back to N5461's email reply (MOD-198-0002877-A), when asked by CTI what he meant by 'keeping grenades in their pockets', N5461 responded:

A *I think that's loose language and at the time I don't, I don't think there was ... re-reading the OPSUM, you know, there is no one who is keeping grenades in their pockets. I mean, I don't know quite what I was, what point I was making. I was clearly inaccurately commenting on what I'd been reading.*

Q *I mean, emails that are not meant to be read ten years later in the light of a [hearing room] we all understand, but you have noted the coming back out with the weapon, but what was it about the grenades that caught your attention?*

A *Um just that. I don't think there is much there, just that it's unlikely that er, it's unlikely ... So, you know, once you have the detainee, they won't have any, they won't have any dangerous material on them. So, you know, how has, I'm not sure how he has got a grenade and I am sort of keeping ... maybe I am making a reference to sort of my thinking about it there, I imagine ... I don't know where he has got that grenade from because he has gone behind the curtain.*

Q *It seems to be from behind a curtain.*

A *Yeah, I mean, yeah, that's, you know, I don't, maybe he has got a grenade right there or something, I don't know.*

Q *But if you were going to use any lethal weapon to threaten [SU1], how successful would a grenade be?*

A *It's like the worst you could choose to use.*

Q *Sorry, the worst you could use to choose?*

A *Yes, you just wouldn't, I mean, depending on what grenade it is. You know, you have got probably at least two safety mechanisms on there and it takes, you know, depending on the grenade, two, three, four seconds to go off, so you know you're dead before you can do anything and you're certainly dead before you can post it and use it. Yeah, I mean grenades aren't for killing people, they're for shocking them.*

Q *It is not like the movies?*

A *No. You know, a grenade is a precursor to shooting people, it's not a, it's not a final act, it's just gaining the advantage, so I wouldn't think that ... and I think the Taliban would probably know that. Um, you know, these aren't amateurs, you know, these are,*

*these are good fighters, so they would know how to use a grenade I would think, so I find ... I mean, he has obviously got a death wish, hasn't he, if he wanted to try and kill them, especially with ones that aren't going to go off.*

Referring back to N5461's previous statement in relation to a deployment that occurred before the period of the Inquiry's Terms of Reference, that detention was not that successful because detainees were released very quickly afterwards, CTI asked N5461 whether that was common knowledge within the insurgency and whether detention limits were short during his deployment. N5461 could not comment on what was known by the insurgency but stated that an insurgent that he had removed from the battlefield was released in a short period of time. However, in N5461's role during the Inquiry's period of interest, he thought it was established that there was a good detention pathway.

In relation to N5461's email reply (MOD-198-0002877-A), CTI asked:

*Q You asked for an explanation at the beginning of your email: "Has anybody come up with an explanation as to why?" Were you genuinely seeking an explanation?*

*A Um I think there's a degree of, um there's a degree of sarcasm in there, but I'm also very conscious that I don't know what's going on, you know, which is why my words are far more guarded than [N2107's] because I know that I don't know what's going on, so I am interested to know when I'm reading something that I don't understand can someone explain it and it's quite frustrating to be on the fringes of it. I was down the line and you can't ask, ask those questions. So I think I am interested in an explanation, but I'm also slightly um mischievously curious as to what explanation that might be.*

*Q Were you provided with an explanation at any stage?*

*A No.*

*Q And in terms of what explanation might be, you are saying you are being "mischievous". Why is there a "mischievous" element to this in the questions you are posing?*

*A Because, as I say in my second statement, there is a spectrum of explanations of what this could be and it could be ... so, I mean, you have seen that email I get sent at five past four in the morning, so when it was all written up it was [the early hours of the morning], so you can have someone who is ... and these are just soldiers writing this stuff up, okay? They're not, you know, it's not like a legal, well no one would have thought it as being a legal document. They kind of knew it was a legal document, but they didn't realise it was going to be to this extent a legal document, so care and attention is not taken in writing this, otherwise you wouldn't send it at four in the morning because that's really not a good time. The guy has not just come on shift. He has done 12 hours. So he could have written that very poorly and I think there are some big gaps in what he has written in terms of just, you know, it just doesn't hang together. So that's one explanation and you have got it right through to people getting murdered on target and you can have anywhere in between of those.*

*Q Obviously you are not on the ground ----*

*A Mm mm.*

*Q -- and there has to be a great deal of care about speculating, which we all understand, especially when you are not on the ground, but given this has happened now on a number of occasions and you have got at least a week before [N2107] raising with you the same TTP of taking someone back in and them ending up dying ----*

*A Mm mm.*

*Q -- and that happening twice on one objective, the writing it up poorly does not sound like a potentially fair explanation of it given that it has happened three times in quite short order. Would that be ----*

*A Yeah, okay um ----*

*Q Because, although it is [the early hours of the morning] ----*

*A Mm mm.*

*Q -- these documents are relied upon.*

*A Mm mm.*

N5461 explained that training was not provided in relation to writing operational reports.

N5461 agreed that there was an understanding that the bones of an OPSUM had to be accurate even if the detail was a bit shady but pointed out that there was also “a lot of assumed knowledge”. N5461 stated that the person writing the OPSUM “would have been an expert in what happens on the ground, not conveying it legally in a proper manner.” Because of this, N5461 stated that he does “question the accuracy” of some of the reports.

*Q But, in terms of the accuracy and, again, legal documents and nobody expects to pour over these in a [hearing room] in an Inquiry, but recounting the basic facts of what happened on target and accounting for why the operation became kinetic, one would expect ----*

*A More detail.*

*Q -- well not necessarily more detail, but if the detail is perhaps thin at least the detail there to be, as far as possible, an accurate recollection of that person’s experience on the ground.*

*A Mm mm.*

*Q So when it says a bravo going back in and reaching behind a curtain for a grenade, you would expect that to be, would you not, an accurate reflection of what happened?*

*A Um I’m not saying that didn’t happen. Yeah, so I would. Yes, I’d say that might have happened, but there’s gaps in the information there for me to be able to understand fully how that might have occurred.*

*Q And if those gaps are significant, you are questioning the operational standpoint, you are questioning the write-up.*

*A Mm mm.*

CTI asked N5461 whether he was concerned that the Objective TYBURN OPSUM was not an accurate and true account of what happened.

*A Um I guess, yeah I guess so just in terms of well it can’t have been because I got questioned about it, so it if was an accurate and true account, so I’m not saying it’s not*

*true, but if it was an accurate account then I know what's going on because it has described all the action, but from my experience I didn't understand and I would say I was probably one of the more attuned people who would understand. So I was just trying to picture what had happened. So I would say it's not an accurate write-up of what has happened. I'm not saying that, but I am, whether it's true or not I don't know.*

CTI referred N5461 to paragraph 6 of his second witness statement to the Inquiry, noting that N5461's recollection was that he had already viewed three or four similar accounts from operations prior to Objective TYBURN, and therefore did not consider the OPSUM and Storyboard for Objective TYBURN to be plausible.

*Q ...Now, just so we are clear what you mean about that, can you explain why you used the word "plausible"?*

*A Based on, on my experience, you know, losing control of an individual, I don't think that's likely that that happened. There is a lot of information there explaining, but I just don't understand why they were, how they had got themselves back into that situation I think.*

*Q Because it comes to it happens once, okay things can go wrong on target and you know, somebody makes a mistake. For it to happen twice on the same target again that is concerning, but by the time you are on three or four, [N2107] described it as "beginning to look bone". Is that a sentiment by 16 February that you were beginning to share?*

*A Yeah, I think, I think it probably was. It's just difficult to, it's difficult at that stage, isn't it, you know, to think that it's ... why haven't they given me all the information I need to understand what's happened on that? You know, "Why would you withhold something from me like that?" I don't know. So I just, yeah, I don't know why, why they're keeping that information back.*

*Q So, if there was an explanation, you would expect it to be in the OPSUM?*

*A Yes, yeah, especially when, you know, there's a spectrum of a, as I say, there's a spectrum and it's not either/or EJK or poor reporting. It's somewhere, you know, it could be anything between that, but most people know that, you know, if you write this up badly it can look bad, so why are they not giving me the information so I don't have to, so people like [N2107] don't start second guessing?*

*Q And if they are writing it up badly, it is not just -- I think you have just answered the question, but this is and these were operations where individuals have died and I know of course this is a conflict and people do die ----*

*A Mm mm.*

*Q -- but if there are any allegations about civilian casualties or the like, this is the start of the documentation level that would be looked at.*

*A Mm mm.*

*Q So there is an onus, is there not, to get it at least right factually at this stage?*

*A Yes, I think you would be surprised about the casual nature with which these were produced, but yes, I would agree with you, there should be, absolutely.*

- Q And the possible explanations as to why this, what happened on these operations, you have got the inaccurate reporting. Your comment is why wouldn't you provide a proper explanation if there is one to extra judicial killing at the extreme end of the spectrum. In February 2011 when you wrote this email, did you fear that there could be extra judicial killings taking place?*
- A Um as I say I think it was a candidate for the proposal as to what could have happened, yeah, but that's not extraordinary. Extra judicial killing can always happen. That's, that's something that we train for. So EJK is always a clear and present risk to everything the military does, which is why we have so much training on it and so many court cases at the moment.*
- Q And is it about the point that acting within the Rules of Engagement, use of lethal force and doing that correctly is absolutely key to what you do?*
- A Mm mm.*
- Q And so whilst there is a risk of extra judicial killings, you are trained to know where the line is?*
- A Yes.*
- Q And so although it is a risk, is it not surprising to you that this could have been happening in Afghanistan?*
- A That what could be happening in Afghanistan?*
- Q Extra judicial killings?*
- A No. It's wafer thin, right, the boundary between, you know the level of violence that is used on these tasks and from one minute you go from a lawful killing to an extra judicial killing and it's, it's wafer thin and it's a constant risk, which is why we get the Rules of Engagement brief before we go on target and why [N2107] would always give that personally. So it's, it's a known risk. It's a high risk. So it wouldn't, so, you know, let's be clear, EJK happened in Afghanistan, we know that increasingly in court and that's probably just the tip of the iceberg of it, but that it should, you know, [UKSF1/UKSF3] are not immune to it. It all comes down to how you conduct yourself on the target and who is leading it.*
- Q Can you give me an example of where it would be wafer thin, the difference between something being lawful and unlawful?*
- A What an actual like vignette of when that might happen?*
- Q Yes, just where, just how that could come about.*
- A The normalisation of violence I think is really how it, where it stems from. You have got just a, you know, they are openly reporting on the people who are killing, right, so that's and that is just a slow normalisation of violence and it doesn't take much of a cognitive shift, I don't think, in a soldier's brain to go from, so you know, these people are all about innovating and er finding new ways of doing business and they're being shown that death counts that are high is a good thing. So it doesn't take much for a shift from lawful killing to unlawful killing. It's, it's, you know, there is a reason only certain units get [ROE XX] because it's so close to the edge of what's proportionate and what's reasonable and you are putting people through a lot of, you are asking them to make some pretty challenging decisions in the heat of the moment. So you are, you're constantly on a, constantly on a, on a knife edge with that, I think.*

N5461 stated that ROE were always at the forefront in theatre and was of the view that the Officer Commanding the Sub-Unit was responsible for ensuring the entire Sub-Unit and support staff were fully briefed on ROE before the start of the operation.

CTI referred N5461 to a further email sent by N2107 to N2349 on 16 February 2011 into which N5461 was copied (MOD-198-0002879-A). This email was the latest in a chain of emails carrying on about Objective TYBURN, one of which had a heading of '20110216-EJK S'. In one of the emails in the chain, N2107 stated that he was "*unimpressed by [N1786's] lack of control*" over the "*serious amount of questionable behaviour from [UKSF1] that is gathering momentum*". N5461 did not remember anything about this.

N5461 explained that within one UKSF Unit, the Sub-Units had "*very different identities*" because they all came from different backgrounds. Whereas another UKSF Unit was an "*incredibly homogenous organisation*" with an overriding culture, creating a "*less hostile environment*".

In response to a question from the Chair asking N5461 to further describe the rivalry between UKSF1 and UKSF3, N5461 responded:

A *Um my exposure to it was that it was healthy. I think there were some unhealthy aspects to it, but I kind of looked at that as being the old and bold and the current sort of, the levels which I had access to I think we sort of saw it as a healthy rivalry. You had good co-operation on [SFHQ(A)], I think, between the two, notwithstanding the element I brought up earlier, but I do think it was a fairly um a healthy rivalry.*

N5461 explained that the UKSF course was "*fairly well developed*" and "*starting to bear fruit*" by the time he underwent it. N5461 was of the view that the UKSF course "*engenders that sort of sense of co-operation and understanding of one another because you know that person's strengths and weaknesses quite well*".

Evidence concluded.