Contents

UNITED KINGDOM[1]

Cases - Court of Appeal — Murder of Iraqi Insurgent

☛ *R v Blackman* [2014] EWCA Crim 1029[2]

This case involved a patrol of Royal Marines deployed in Helmand Province, Afghanistan. On 15 September 2011, insurgents attacked Command Post Taalanda. An unknown insurgent was killed, initially assumed to have died of injuries inflicted by gunfire from an Apache helicopter called in from Camp Bastion.

However, in the course of an unconnected investigation in September 2012, a video of the incident filmed from the helmet camera of a member of the patrol came to light. The video showed the appellant shooting the unknown insurgent dead at close range, telling his patrol not to tell anyone what he had done, and saying that his act constituted a breach of 'the Geneva Convention'.

In October 2012, five Marines, including the appellant, were charged with the murder of the unknown insurgent on the basis of section 42 of the *Armed Forces Act 2006*.[3]

[1] Caroline Kittelmann (nee Harvey), Solicitor of the Supreme Court of England and Wales.

[2] <https://www.judiciary.gov.uk/wp-content/uploads/2014/05/r-v-sergeant-alexander-wayne-blackman.pdf.>

[3] s 42 Criminal conduct:

(1) A person subject to service law, or a civilian subject to service discipline, commits an offence under this section if he does any act that—
(a) is punishable by the law of England and Wales; or
(b) if done in England or Wales, would be so punishable.
(2) A person may be charged with an offence under this section even if he could on the same facts be charged with a different service offence.
(3) A person guilty of an offence under this section is liable to—
(a) if the corresponding offence under the law of England and Wales is under that law an offence punishable with imprisonment, any punishment mentioned in the Table in section 164;
(b) otherwise, any punishment mentioned in rows 5 to 12 of that Table.

Proceedings were subsequently discontinued against two of the five Marines. The appellant was found guilty of murder on 8 November 2013 and the other two Marines were acquitted. The appellant was sentenced on 6 December 2013 to life imprisonment with a minimum term of 10 years less time in custody, a reduction to the ranks, and dismissal with disgrace from the Armed Forces.

At Court Martial, the following findings were made as a result of the video evidence:

> [The insurgent] had been seriously wounded having been engaged lawfully by an Apache helicopter and when [the appellant] found him he was no longer a threat. Having removed his AK47, magazines and a grenade [the appellant] caused him to be moved to a place where [the appellant] wanted to be out of sight of [the] operational headquarters at Shahzad so that, to quote what [the appellant] said, "PGSS [Persistent Ground Surveillance Systems] can't see what we are doing to him".
>
> He was handled in a robust manner by those under [the appellant's] command clearly causing him additional pain and [the appellant] did nothing to stop them from treating him in that way. When out of view of the PGSS [the appellant] failed to ensure he was given appropriate medical treatment quickly and then ordered those giving him some first aid to stop.
>
> When [the appellant was] sure the Apache helicopter was out of sight, [the appellant] calmly discharged a 9 millimetre round into his chest from close range. [The appellant's] suggestion that [he] thought the insurgent was dead when [he] discharged the firearms lacks any credibility and was clearly made up after [he] had been charged with murder in an effort to concoct a defence. It was rejected by the Board.
>
> Although the insurgent may have died from his wounds sustained in the engagement by the Apache [the appellant] gave him no chance of survival. [The appellant] intended to kill him and that shot certainly hastened his death.
>
> [The appellant] then told [his] patrol they were not to say anything about what had just happened and [the appellant] acknowledged what [he] had done by saying [he] had just broken the Geneva Convention. The tone of calmness of [his] voice as [he] commented after [he] had shot him were matter of fact and in that respect they were chilling.[4]

---

(4) Any sentence of imprisonment or fine imposed in respect of an offence under this section must not exceed—
(a) if the corresponding offence under the law of England and Wales is a summary offence, the maximum term of imprisonment or fine that could be imposed by a magistrates' court on summary conviction;
(b) if that corresponding offence is an indictable offence, the maximum sentence of imprisonment or fine that could be imposed by the Crown Court on conviction on indictment.
(5) In subsection (4) "a summary offence" and "an indictable offence" mean, respectively, a summary offence under the law of England and Wales and an indictable offence under that law.
(6) In this section and sections 45 to 49 "act" includes an omission and references to the doing of an act are to be read accordingly.
(7) In subsections (1) and (8) and sections 45 to 49 "punishable" means punishable with a criminal penalty.
(8) In this Act "the corresponding offence under the law of England and Wales", in relation to an offence under this section, means—
(a) the act constituting the offence under this section; or
(b) if that act is not punishable by the law of England and Wales, the equivalent act done in England or Wales.

[4] *R v Blackman* [2014] EWCA Crim 1029, [32].

He appealed against both conviction and sentence.

On conviction, the appellant argued that he had been discriminated against in violation of Article 14 of the European Convention on Human Rights by being tried by court martial (and thus on the basis of a simple majority) rather than in a civil court (with a jury by majority of 10 if there are not less than 11 jurors at the time of verdict, or if there are 10 jurors at the time of verdict, 9 of them must be agreed[5]).

The Court of Appeal rejected this ground of appeal on the basis of the case of *Twaite*, in which it was held that the provisions governing courts martial did not violate the right to a fair trial under the Convention.[6] Although no Article 14 argument was raised in that case, the Court observed that

(i) it is well recognised that trial by court martial satisfies the requirements of Article 6;

(ii) Strasbourg case law confirms that differences between the civil courts and courts martial are justified by the differences in civil and military life and do not amount to discrimination against members of the armed forces, and highlights the advantage of avoiding a 'hung jury' in a system of military justice[7]; and

(iii) different legal systems have differing provisions as to whether unanimity is required and as to what majority is necessary, which result in a conclusion that a system that decides guilt or innocence by simple majority is not objectionable.[8]

On sentence, the appellant argued that the Court Martial should not have considered the insurgent's vulnerability as an aggravating factor as it did not fit into the categories set out in paragraph 10 (b) of Schedule 21 to the *Criminal Justice Act 2003* which referred expressly to the victims' particular vulnerability 'because of age or disability'. Further, the appellant argued that the Court Martial was incorrect in its finding that the appellant and those under his command were not under any immediate threat. Also, the appellant argued that the Court Martial had not paid sufficient regard to the appellant's perception that the war had turned personal, to his combat stress disorder and the effect of the death of his father immediately before his deployment to Afghanistan. Finally, it was argued that the financial effect upon the appellant had not been given sufficient weight. These factors should have led the Court Martial to proceed from a lower minimum term than 15 years.[9]

The Court of Appeal found that the vulnerability of the insurgent did not add 'anything material' to the four deliberate acts of the appellant of stopping first aid, moving the insurgent to a place where the appellant could not be seen, shooting the insurgent, and instructing his patrol not to say anything about what had happened. The Court also rejected the argument that the fact that the patrol was under threat had a bearing on the Court Martial's finding that there was no threat from the wounded insurgent, finding that even if there had been other insurgents in the vicinity, 'that played no causative effect in the appellant's decision to fire at the wounded insurgent and kill him'. The Court confirmed the aggravating factors of (i) deliberately involving other soldiers in the dishonest cover-up and (ii) failing to follow the 'standards of conduct which represented the values for which HM Forces had been sent to Afghanistan'.[10]

[5] See Section 17 of the *Juries Act 1974*.
[6] *R v Twaite* [2010] EWCA Crim 2973.
[7] *Engel and Others v The Netherlands* (Application No. 5100/71, decision 8 June 1976).
[8] *R v Blackman* [2014] EWCA Crim 1029, [20-23].
[9] Ibid [51-55].
[10] Ibid [64-67].

On the mitigating factors, the Court of Appeal confirmed the mitigating factors of (i) the appellant's outstanding service record and (ii) his excellent record of service and the effect upon him of the death of his father, and largely dismissed the bearing of the appellant's financial situation. The Court placed more weight on operational stress, as follows:

> 70. It is, in our view, self-evident that armed forces sent to a foreign and hostile land to combat an insurgency will be placed under much greater stress than armed forces sent to fight a regular army. There is the obvious difficulty that it is often not possible in a population that may be largely hostile or intimidated by the insurgents to detect the identity of the insurgents who shoot at regular troops of HM Armed Forces, plant improvised explosive devices or commit other clandestine actions.
>
> 71. In addition there was the clear perception amongst HM Armed Forces that the insurgents in Afghanistan committed severe atrocities upon British soldiers; it matters not that some may contend that that was not the case. It was the perception that was material. The effect of this on the appellant can be viewed as either an additional stress factor or (as the Court Martial found) a cause of provocation.
>
> 72. In addition to the considerable stress of dealing with an insurgency in such conditions, it is very clear that significant further stress must have been placed upon the appellant because the remote location of his command post to which we have referred in paragraph 39 above meant that he was not seen regularly by those more senior to him. He had therefore little face to face contact with those commanding him and they could not assess the effect of these conditions upon him. Although training is important, it is difficult to see how such training can be sufficient in the absence of regular visits by a senior commanding officer to talk face to face and to observe the effects on those exercising command under him.[11]

The Court of Appeal found that the Court Martial had been correct to proceed from a minimum term of 15 years as this was the lowest of the starting points for which Parliament has provided for murder by an adult.[12]

His sentence was reduced to life imprisonment with a minimum term of 8 years because:

> Taking into account the whole of the evidence, we conclude that combat stress arising from the nature of the insurgency in Afghanistan and the particular matters we have identified as affecting him ought to have been accorded greater weight as a mitigating factor.
>
> Moreover, the particular circumstances did not require an additional term by way of deterrence to the sentence as the Court Martial found. The open and very public way in which the proceedings were conducted overall, the worldwide publicity given to the appellant's conviction, the life sentence imposed on him and the significant minimum term he must in any event serve before any consideration of parole will be sufficient deterrence.
>
> On that basis we have therefore concluded that although he remains subject to a sentence of imprisonment for life, the minimum term which he must serve before being considered for parole should be reduced to 8 years. His release will then depend on the Parole Board and, even thereafter, he will remain subject to the terms of the conditions of his licence. To that extent and to that extent only is this appeal allowed.[13]

[11] Ibid [70-72].
[12] Ibid [63].
[13] Ibid [75-77].

Early Day Motion — UK Policy on Drones

☛ Early Day Motion 487 of 6 November 2014

Primary sponsor: Tom Watson
Sponsors: David Davis, Yasmin Qureshi, John Hemming, David Anderson, Linda Riordan

> That this House welcomes the Birmingham Policy Commission on The Security Impact of Drones: Challenges and Opportunities for the UK, chaired by Professor Sir David Omand, which was published on 22 October 2014; notes that the exploitation of drones to the UK's benefit is held back by a lack of central direction; stresses the need for policy on the use of drones articulating the UK position on application of international human rights and humanitarian law in complex conflicts; calls on the Government to distinguish UK practice, and protect UK personnel, from inadvertent complicity in the targeted killing of suspects outside traditional battlefields by the US; invites the Government to disclose the guidance issued to staff, and safeguards in place, to ensure that shared intelligence cannot be used for targeted killing contrary to UK law; and further calls on the Government to implement these recommendations forthwith.

Total number of signatures: 19
David Anderson, David Crausby, Jim Cunningham, David Davis, Mark Durkan, Paul Flynn, Roger Godsiff, Mike Hancock, John Hemming, John Leech, Naomi Long, Caroline Lucas, John McDonnell, Sandra Osborne, Yasmin Qureshi, Linda Riordan, David Ward, Tom Watson, Mark Williams

Written Answers — Explosive Weapons

☛ HL Deb, 24 February 2014, c221W

Lord Dubs, Labour:

> To ask Her Majesty's Government what assessment they have made of the recommendations of the United Nations Secretary-General and the International Committee of the Red Cross that explosive weapons with a wide impact area should be avoided in densely populated areas.

Baroness Warsi, Conservative:

> The British Government's view is there is no utility in attempting to describe, beyond the current provisions given under International Humanitarian Law, a category of "explosive weapons with wide impact area". We condemn the indiscriminate or disproportionate use of any weapon, including the deliberate targeting of civilians and civilian objects. The UK fully complies with and is a champion of International Humanitarian Law which makes provision for the use of lethal force only with adequate precautions, and is committed to upholding the Geneva Conventions and encouraging others to do the same.

Written Answers — RPAs

☛ HC Deb, 17 March 2014, c417W

Tom Watson, Labour, West Bromwich East:

> To ask the Secretary of State for Foreign and Commonwealth Affairs what steps he plans to take in response to the recommendations of the UN Special Rapporteur on human rights and counter-terrorism in his report dated 28 February 2014 on the use of armed drones in extraterritorial lethal counter-terrorism operations.

Hugh Robertson, Minister of State:

> This report identified a number of interesting and challenging legal questions. The UK believes that existing international law sufficiently covers the use of Remotely Piloted Aircraft (RPA). We regard them as subject to the same legal considerations as other weapons systems.
>
> UK forces operating RPA in Afghanistan do so in accordance with international humanitarian law, following the principles of distinction, humanity, proportionality and military necessity. The incident referred to in Now Zad, Helmand was subject to an International Security Assistance Force (ISAF) investigation, and therefore any final decision on the report's disclosure sits within the ISAF chain of command.

Written Answers — Cluster Munitions

☛ HC Deb, 14 May 2014, c609W

Nia Griffith, Shadow Minister (Wales):

> To ask the Secretary of State for Defence what safeguards are deployed to prevent a sensor-fused munition operating in automatic mode from confusing a military target with a civilian target.

Philip Dunne, The Parliamentary Under-Secretary of State for Defence:

> The targeting process, not the weapon, takes discrimination, proportionality and precautions in attack into account. The decision whether to use lethal force against a legitimate military target is made through a rigorous targeting process, the targeting directive for a specific theatre of operations and rules of engagement which ensure adherence to international humanitarian law.
>
> Since 1999, when the requirement to do so under the Geneva conventions additional protocol I article 36 came into effect for the UK, all new weapons, means and methods of warfare entering service have been subjected to a review in order to ensure they are capable of being used lawfully in armed conflict. The UK is committed to upholding the Geneva conventions and encourages others to do the same.

Written Answers — Cluster Munitions

☛ HC Deb, 14 May 2014, c608W

Nia Griffith, Shadow Minister (Wales):

> To ask the Secretary of State for Defence how levels of human control are defined in use of the ballistic sensor-fused munition and other similar systems which can operate in automatic mode.

Philip Dunne, The Parliamentary Under-Secretary of State for Defence:

> For existing automated systems, human control requires an authorised operator to set the pre-programmed parameters for the weapon system's operation. Authority to activate such systems is given only in full accordance with the targeting directive for a specific theatre of operations, targeting policy and rules of engagement which ensure adherence to international humanitarian law.
>
> The decision to deploy a particular weapon system in any given theatre of operations depends upon the context of that operation. It would be unreasonable to deny our armed forces the option of using the most appropriate weapons (including systems that can be operated in automatic mode) to engage legitimate military targets.

Written Answers — 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict

☛ HL Deb, 26 September 2014, c416W

Lord Renfrew of Kaimsthorn, Conservative:

> To ask Her Majesty's Government, further to the answer by Lord Gardiner of Kimble on 12 May (HL Deb, col 1650), when they expect there to be parliamentary time to introduce legislation to ratify the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict; and what assessment they have made of the damage to cultural property in the recent and continuing armed conflict in Syria and northern Iraq.

Lord Wallace of Saltaire, Liberal Democrat:

> The legislative priorities for this session were set out in the Queen's speech in June. The Government remains committed to protecting cultural heritage and we will seek to legislate on the 1954 Hague Convention and the subsequent protocols when parliamentary time allows. The 1954 convention already informs the Armed Forces' law of armed conflict doctrine and training policy, particularly with regard to respect for cultural property, precautions in attack and recognition of the protective emblem.
>
> The Government is deeply concerned by reports of damage to cultural property in Syria and Northern Iraq, including recent attacks by Islamic State of Iraq and Levant against Mosques, Churches and other holy places. The reported destruction of the Tomb of Yonus (Jonah) in Mosul on 24 July by ISIL is further evidence of the groups barbarism and disregard for International Humanitarian Law. We are also concerned that Syria's cultural heritage is being plundered for private profit. That is why in December 2013 the UK and other EU nations amended the EU's sanctions regime to make clear that involvement in trade relating to artefacts illegally removed from Syria is prohibited. This will help safeguard Syria's cultural heritage for the future and we will continue to do all we can to bring an end to the conflict and restore stability in the region.

Written Answers — Gage Report

☛ HC Deb, 27 October 2014, cW

Nick Brown, Labour, Newcastle upon Tyne East:

> To ask the Secretary of State for Defence, what steps he has taken in response to Recommendation 44 of the Gage Report into the death in custody of Baha Mousa.

Mark Francois, The Minister of State, Ministry of Defence:

> I refer the right hon. Gentleman to the Written Ministerial Statement of 27 March 2014, (Office Report,column 32WS),in which I explained that the Ministry of Defence have considered Sir William Gage's recommendation but have not felt it necessary to modify further the existing inspection regime which already possesses the required levels of independence:
>
> "As envisaged in recommendation 44 of the Inquiry's report, the Department has given careful consideration to the possibility of an independent inspection of the UK's Afghan detention facilities by Her Majesty's Chief Inspector of Prisons. However, UK detention facilities in Afghanistan continue to be inspected by the Provost Marshal (Army) every six months, and annually by the Army Inspector; they are also visited regularly by the International Committee of the Red Cross to ensure compliance with International Humanitarian Law. On balance, we believe that this triple inspection regime is already fit for purpose and does not require further amendment."

Written Answers — Remotely Piloted Aircraft Systems

☛ HL Deb, 28 October 2014, c152W

Lord Judd, Labour:

> To ask Her Majesty's Government what steps they are taking to support the formulation of United Nations guidance on the application of human rights law to drone use.

Baroness Anelay of St Johns, Conservative:

> The Government believes that international law on the use of military force is absolutely clear. There must be a lawful basis for such force to be used and activities must be conducted in accordance with the law of war or international humanitarian law. This is as true when considering the possible use of remotely piloted aircraft systems as it is with any other military asset or weapon. Remotely Piloted Aircraft Systems are a relatively new military asset, and their use, whether armed or unarmed, will continue to evolve. However, the existing international legal framework is clear and robust; and, as with any other weapons system, it is fully capable of governing their use. We do not need to rewrite the laws of war in order to be confident that, when used in such lawful circumstances, remotely piloted aircraft systems operate in the same legal environment as other military means. We have set this position out previously including at the UN Human Rights Council in response to the report of the Special Rapporteur.

Written Answers — Remotely Piloted Aircraft Systems

☛ HL Deb, 2 December 2014, c255W

Lord West of Spithead, Labour:

> To ask Her Majesty's Government whether they have incorporated a policy regarding use of lethal drones in British Defence Doctrine.

Lord Astor of Hever, Conservative:

> Armed Remotely Piloted Aircraft Systems (RPAS) are operated by the UK's Armed Forces in accordance with the same domestic and international legal framework and

> Departmental policy that regulates conventional manned aircraft. The Doctrine and Rules of Engagement that govern and underpin the use of armed RPAS are aligned to both current UK policy and International Humanitarian Law (IHL).
>
> The UK constantly reviews and updates both its policy and doctrine to ensure it remains both operationally effective and fully compliant with IHL.

Written Answers — Remotely Piloted Aircraft Systems

☛ HL Deb, 3 December 2014, c280W

Lord West of Spithead Labour:

> To ask Her Majesty's Government what is their assessment of the Birmingham Policy Commission's report The Security Impact of Drones; and whether they will make a statement on a national policy on the use of lethal drones.

Baroness Anelay of St Johns, Conservative:

> We have studied the Report, which is a useful contribution to discussion of issues around the use of armed drones.
>
> The UK has repeatedly set out its policy position on the use of Remotely Piloted Aircraft Systems (RPAS), including at the UN General Assembly and the UN Human Rights Council. The UK's fleet of armed RPAS are operated by highly trained Royal Air Force personnel in accordance with International Humanitarian Law and UK Rules of Engagement. The same strict Rules of Engagement that govern the use of conventional manned military aircraft also apply to RPAS, this includes robust criteria on establishing positive identification and requires commanders to do everything feasible to verify that the target is a military objective. The UK believes that existing international law sufficiently covers the use of RPAS, which are subject to the same legal considerations as other weapons systems.

Government Inquiry — Alleged abuse of Iraqi detainees by British Armed Forces

☛ Al-Sweady Inquiry

As discussed in previous Correspondent's reports, this Inquiry was set up to report on allegations of human rights abuses by British soldiers of Iraqi nationals near Al-Majar after a firefight known as the Battle of Danny Boy in 2004. The allegations included unlawful killing (later withdrawn) and ill-treatment. The Inquiry was also tasked with making recommendations.

The Report of the Inquiry, chaired by Sir Thayne Forbes, was laid before Parliament on 17 December 2014.[14] In his Statement, Sir Forbes summarised the Report as follows:

> The work of this Inquiry has established beyond doubt that all the most serious allegations made against British soldiers involved in what has become known as the "Battle of Danny Boy" and its aftermath and which have been hanging over those soldiers for the past ten years have been found to be wholly without foundation and entirely the product of deliberate lies, reckless speculation and ingrained hostility. As I

[14] Full Report available at <http://webarchive.nationalarchives.gov.uk/20150115114702/http:/www.alsweadyinquiry.org/>

> make clear in my report, some instances of ill-treatment by the British military did occur, but these were relatively minor when compared with the original very serious allegations. I have also come to the conclusion that the overall approach of the detainees and that of a number of the other Iraqi witnesses to the giving of their evidence was both unprincipled in the extreme and wholly without regard for the truth.[15]

After the firefight, nine Iraqis were detained. The remains of a further 20 deceased Iraqis were transported to the British military base at Camp Abu Naji to be identified, as it was suspected that among them may be a particular individual responsible for the killing of six Royal Military Policemen in 2003. A further eight deceased Iraqis were not recovered.

In relation to claims made about the treatment of the bodies by members of the Armed Forces, the Chairman concluded:

> I am completely sure that none of the bodies of the deceased were mutilated or mistreated by the British in any way and that none of them had been tortured by the British soldiers prior to his death. I have no doubt that each of the 28 deceased Iraqi men who were killed by British soldiers as a result of the fighting on 14 May 2004 was, in fact, an active and willing participant in the ambush and that all of them were killed as a result of British fire on the battlefield itself.[16]

In relation to claims made relating to the restraint and capture of the detainees, the Chairman concluded:

> I have no doubt that the nine detainees all deliberately lied when giving their evidence for their presence on the battlefield that day and in their allegations of ill-treatment. Whilst some force may have been used against them whilst being restrained during capture, there was no deliberate ill-treatment. Perhaps the most significant lie of many was that Hamid Al-Sweady, after whom this Inquiry was originally named, had been alive when he was captured that day. Such assertions as that undoubtedly played a part in the persistence of the completely false allegations that Iraqi men had been detained alive and then, in effect, murdered at Camp Abu Naji the subsequent night. In fact, Hamid Al-Sweady was one of the insurgents and he had been killed outright during the course of the battle. There was unchallenged expert evidence that the man who had been photographed while his body was being carried by two soldiers on the battlefield was Hamid Al-Sweady. There was also evidence from a forensic pathologist that the person whose body can be seen in that photograph was most likely dead and, in fact, I have no doubt that that was indeed the case.[17]

However, some ill-treatment was found to have occurred.

In relation to claims made in relation to the processing of detainees, the Chairman concluded:

> [S]ome of the detainees did have all or some of their clothing forcibly removed. Although, I have no doubt that the humiliation involved in requiring the detainees to strip naked during processes was not maliciously inflicted, more appropriate steps should have been taken to ensure that each detainee understood the reasons for doing so and to provide some degree of privacy. The manner and circumstances in which the requirement for each detainee to remove his clothes was put into effect and the way in which it was put into effect did, in my judgment, amount to a form of ill-treatment. I also

[15] Sir Thayne Forbes , *Chairman's Statement*, <http://webarchive.nationalarchives.gov.uk/20150115114702/http://www.alsweadyinquiry.org/linkedfiles/alsweadyinquiry/theal-sweadyinquiryreport-transcriptofchairmansstatement.pdf>, 2-3.
[16] Ibid 9.
[17] Ibid 6-7.

> find that there was also a general failure on the part of the medical staff based at Camp Abu Naji to apply properly the policy requirements that detainees should be certified fit for both detention and questioning and also I have come to the conclusion that, in the case of one of the detainees, there was a failure to take or give appropriate treatment to a significant wound to his right foot.[18]

In relation to claims made in relation to the questioning of the detainees, the Chairman stated:

> On the night of 14/15 May, each of the nine detainees was subject to a process known as "tactical questioning", the purpose of which was to extract time-sensitive tactical intelligence from a detainee or to establish if a detainee required interrogation in the divisional temporary detention facility. Tactical questioning that night was conducted by a soldier who was given the cipher "M004". He had received training in prisoner handling and tactical questioning. I have concerns about the training he received and what he subsequently regarded as the distinction between permissible and impermissible behaviour. There are five aspects of M004's questioning that night where I accept that ill-treatment occurred: First, the use of sight restriction. M004 delayed the removal of each detainee's blacked-out goggles in order to make his imminent questioning of the detainee more effective. He therefore used it as an interrogation technique which was in contravention of the Joint Intelligence Committee directive on interrogation by armed forces. Second, the invasion of personal space. I have no doubt that M004 honestly believed that it was acceptable to blow gently on the back of the blindfolded detainee's neck whilst walking slowly around him in silence. But the circumstances were such that, in my view, it did amount to a form of ill-treatment. Third, the use of the tent peg to scare the detainees. I am satisfied that the striking of the tent peg loudly on a table, which was intended to scare the detainee whilst he was still blindfolded, did amount to a form of ill-treatment. Fourth, shouting. I am satisfied that when shouting at the detainees, M004 did act entirely in accordance with his training and that it was part of the so-called "harshing" technique of interrogation. This technique has now been withdrawn from use by the British Army. It is not possible for me to say when considered in isolation whether the actual harshing technique as used by M004 that night did amount to ill-treatment itself, but it was an integral part of an overall process of questioning that, when considered as a whole, did amount to a form of ill-treatment. Fifth, the application of the so-called bridge, carrot and stick technique. I am satisfied that M004's use of this interrogation technique, when conducting his tactical questioning on the night of 14 and 15 May 2004, was consistent with his understanding of what was permissible in the light of his training. But, as with the use of the harsh technique, it was an integral part of an overall process that amounted to a form of ill-treatment. The detainees also made a number of other allegations of ill-treatment which I reject.[19]

In relation to claims made in relation to the holding of the detainees, the Chairman concluded:

> I have no doubt that the detainees were not 19 given any form of meal while they were held at 20 Camp Abu Naji and that the overall failure to provide the detainees with adequate food at any stage during their detention at Camp Abu Naji did amount to a form of ill-treatment.[20]
>
> I am satisfied that the detainees were kept awake until they had been tactically questioned that night and allowed to sleep only after this was completed at 3.00 am. In

[18] Ibid, 12.
[19] Ibid 12-14.
[20] Ibid 16.

> my view, it was wholly inappropriate to prevent the detainees from sleeping for such a reason and until such a late hour. I am satisfied that this also amounted to a form of ill-treatment.[21]
>
> I have no doubt that the nine detainees remained deprived of their sight by the use of blacked-out goggles during the whole period of their detention at Camp Abu Naji during 14 and 15 May 2004, except for brief periods during the processing and tactical-questioning sessions. This was done partly for security, but also to help maintain the shock of capture. Sight deprivation for such a purpose was impermissible and the continuous deprivation of the detainees' sight amounted to a form of ill-treatment, in my view.[22]

In the Report, nine recommendations are made, as follows:

- 1. Documents: on the basis of problems identified in the original judicial review proceedings as well as in the course of the Inquiry, it was found that there was a need to ensure that: '(i) there is a satisfactory transfer, collation and retention of documents/records from theatre and (ii) that the routine destruction of documents/records, which may be relevant, does not take place.' Although some steps had been taken by the Ministry of Defence, there were not sufficient. Therefore, the first recommendation was:
    - Consideration should be given to the establishment of a policy by the Ministry of Defence to ensure that all documents or other material, including electronic material, are retrieved from theatre and elsewhere at the conclusion of an operation, catalogued and stored in secure accommodation for a period of at least 30 years and all searches of that material recorded, so that the Department is able to say what material is available and its location, and if the need arises, to confirm in litigation or to a Public Inquiry that it has complied with its obligation to disclose relevant material.[23]
- 2. Recording and retention of records of interrogations and tactical questioning: accurate records of contentious sessions in the form of recordings would have been invaluable in ascertaining the conduct and content of such sessions. Guidelines for such recordings should be given further thought, including rules of preservation and retention. The second recommendation was therefore:
    - Digital video and audio recordings should be made of both interrogation and tactical questioning sessions. Such recordings should be retrieved from theatre, catalogued and stored in the same way and for the same period of time as the other documents/records to which reference is made in Recommendation 1.[24]
- 3. Dating and archiving of training documents: in the course of the Inquiry's review of the materials on which the Prisoner Handling and the Tactical Questioning Course taken by M004 was based, it became apparent that some of the material was undated. The third recommendation was therefore as follows:
    - All training material should be dated, appropriately retained and archived in such a way that it can easily be established when the training material was

[21] Ibid16-17.
[22] Ibid 17.
[23] Executive Summary of Report, <http://webarchive.nationalarchives.gov.uk/20150115114702/http://www.alsweadyinquiry.org/linkedfiles/alsweadyinquiry/inquiryreportexecutivesummary.pdf>, [709-712].
[24] Ibid <713-716>.

composed, when it came into force and the period during which it remained in force.[25]

- 4. The Shooting Incident Investigation Policy: this policy was regarded by all as unworkable and delayed the commencement of the 2004 Royal Military Police Investigation into the underlying incident. The policy needed to be reconsidered in light of the ECHR judgment in *Al-Skeini v United Kingdom* [2011]. As a result, the following recommendation was made:
    - A Shooting Incident Policy should be drafted which is achievable in practice in Theatre, which is compliant with Article 2 of the ECHR and which enables the ascertainment of the relevant facts leading up to, during and consequent upon the Shooting Incident by an independent body such as the Royal Military Police within a time limited but reasonable period after the Shooting Incident.[26]
- 5. Arrest records: discrepancies were found in the documentation relating to the arrest of Hamzah Joudah Faraj Almalje (detainee 772) on the Southern Battlefield on 14 May 2004. Although the relevant policy had been revised, the Chairman was not satisfied that sufficient consideration has been given to a satisfactory procedure for ensuring that injuries suffered by captives were properly recorded and explained. As a result, the Chairman made the following recommendation:
    - Appropriate procedures should be introduced to ensure that there is an accurate and detailed contemporaneous record of the circumstances relating to the original capture/ detention of a prisoner and his general physical condition (including an appropriate photographic record) on arrival at the Prisoner Handling Area together with an explanation from the soldier responsible for the detention of the individual of any obvious physical injuries suffered by the detainee in question.[27]
- 6. Areas of deficiency for further consideration by the Ministry of Defence: the Chairman made the following recommendation:
    - All detainees should be clearly informed of their rights and obligations as soon as is practicable upon arrival at any detention facility. As a minimum this should include informing the detainee as to the reason(s) for his detention and explaining, in clear and basic terms, that his human rights will be protected and respected.[28]

Three further recommendations were made:

- Appropriate measures should be taken to ensure that minimum safeguards are in place where a detainee is to be strip-searched. These include informing a detainee as to the necessity for the strip-search and requesting his/her co-operation. Those conducting a strip-search should always bear in mind the need to respect the detainee's dignity, particularly having regard to any cultural sensitivities. Searches should be conducted by, and in front of the minimum number of persons necessary and screens or other measures should be taken to

[25] Ibid [717-719].
[26] Ibid [720-722].
[27] Ibid [723-726].
[28] Ibid [727].

shield a detainee from as many of those attending as possible. Those persons should be of the same gender as the detainee unless none are available.[29]

- There should be an appropriate review of all current, relevant policy and procedures to ensure that a sufficient number of suitably trained interpreters are readily available and on hand during all aspects of prisoner detainee handling, including all forms of interrogation and questioning, during the issuing and provision of medication, the need to ensure that basic requests for water/food/lavatory breaks are properly understood in Prisoner Holding Areas and to give safety briefings and to help deal with any problems prior to and/or during flight transfers.[30]
- Appropriate forms should be made available to allow a medical examiner to declare a detainee unfit for detention and questioning. The decision as to whether a detainee has been declared unfit for detention and questioning should be readily apparent and the reasons for that decision should be recorded. Any conclusion to the contrary effect should be expressed in ethically acceptable terms.[31]

Government Inquiry — Involvement of United Kingdom in Iraq

☛ Iraq War Inquiry

This Inquiry, chaired by Sir John Chilcot, is examining the role of the United Kingdom in Iraq between 2001 and 2009. Although the hearings concluded in 2011, the report has not yet been published due at least in part to disclosure issues.

In May 2014 Sir John Chilcot wrote to the Government, stating that principles for disclosure had been agreed and the report would be forthcoming.[32] As of 31 December 2014, the report has not yet been published.

CAROLINE KITTELMANN

[29] Ibid [728].
[30] Ibid [729].
[31] Ibid [730].
[32] <http://www.iraqinquiry.org.uk/media/55103/2014-05-28_Chilcot_Heywood.pdf>.