

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Claim Numbers: HQ08X01180,

HQ08X01413

HQ08X01416

HQ08X03220

HQ08X01686

BETWEEN:

- (1) BISHAR AL RAWI
- (2) JAMIL EL BANNA
- (3) RICHARD BELMAR
- (4) OMAR DEGHAYES
- (5) BINYAM MOHAMMED
- (6) MARTIN MUBANGA

Claimants

and

- (1) THE SECURITY SERVICE
- (2) THE SECRET INTELLIGENCE SERVICE
- (3) THE ATTORNEY GENERAL
- (4) THE FOREIGN AND COMMONWEALTH OFFICE
- (5) THE HOME OFFICE

Defendants

EXHIBIT LC7



Intelligence and Security
Committee

The Handling of Detainees by
UK Intelligence Personnel in Afghanistan,
Guantanamo Bay and Iraq

Chairman:

The Rt. Hon. Ann Taylor, MP

Cm 6469

£10.50

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From: The Chairman, The Rt Hon Ann Taylor MP

INTELLIGENCE AND SECURITY
COMMITTEE

70 Whitehall
London SW1A 2AS

1 March 2005

Rt Hon Tony Blair MP
Prime Minister
10 Downing Street
London SW1A 2AA

Dear Tony,

I enclose the Intelligence and Security Committee's *Report on the Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq*. This Report covers the contact between detainees and the SIS, Security Service, both military and civilian DIS staff and military intelligence personnel in Afghanistan, Guantanamo Bay and Iraq.

We look forward to discussing it with you.

Yours sincerely,

Ann

ANN TAYLOR

THE INTELLIGENCE AND SECURITY COMMITTEE

The Intelligence and Security Committee is established under the Intelligence Services Act 1994 to examine the policy, administration and expenditure of the Security Service, Secret Intelligence Service (SIS) and Government Communications Headquarters (GCHQ). The Committee has developed its oversight remit, with the Government's agreement, to include examination of the work of the Joint Intelligence Committee (JIC), the Intelligence and Security Secretariat, which includes the Assessments Staff in the Cabinet Office, and the Defence Intelligence Staff (DIS) – part of the Ministry of Defence (MoD).

The Committee's membership:

- Rt. Hon. Ann Taylor, MP (Chairman)
- Rt. Hon. James Arbuthnot, MP
- Rt. Hon. The Lord Archer of Sandwell QC
- Rt. Hon. Kevin Barron, MP
- Rt. Hon. Alan Beith, MP
- Rt. Hon. Alan Howarth CBE, MP
- Rt. Hon. Michael Mates, MP
- Rt. Hon. Joyce Quin, MP
- Rt. Hon. Gavin Strang, MP

THE FIGHT AGAINST TERRORISM

34. Counter-terrorism work, both international and Irish related, has been a priority for the UK's intelligence and security Agencies for many years. In the US, the authorities have investigated and responded to the global terrorist threat, but the 11 September 2001 attacks on the US mainland resulted in a key change in American attitudes towards terrorism. As part of this development, the US Congress passed an Authorisation for the Use of Military Force on 18 September 2001 and the US-led coalition initiated military action against Afghanistan on 7 October 2001.

Afghanistan

35. The SIS was already conducting counter-drugs and international terrorism work on Afghanistan. They had established a network of contacts and, following these terrorist attacks, they devoted significant effort against Al Qaeda and the Taliban. On 28 September 2001, the Foreign Secretary approved the deployment of *** SIS officers to Afghanistan to support the US-led military and covert action.

36. The first detainees were captured by the US authorities and held at Mazar-e-Sharraf in November 2001.⁷ That month, in anticipation of the detention in Afghanistan of terrorist suspects with UK connections and the possibility that UK intelligence personnel might need to interview them, the Security Service consulted the Crown Prosecution Service. It was concluded that any interviews conducted in Afghanistan "*would not inhibit future prosecutions of any detainees where this was considered to be an appropriate course of action*".⁸

37. By late 2001, the SIS had deployed a total of *** officers to Afghanistan. In mid-December 2001 they began to interview detainees held by the Northern Alliance, which was the coalition of anti-Taliban fighters being supported by the US and UK in Afghanistan. They were also exploring, with the US military authorities, the possibility of gaining access to US-held detainees.

38. The observance of human rights is an important part of the Agencies' general training. However, prior to their deployment to Afghanistan, the SIS officers were not given specific training on the rights of detainees and the Geneva Conventions, nor were they aware of the 1972 announcement banning certain interrogation techniques.

39. The SIS and Security Service told us that both organisations "*operate in a culture that respects human rights*" and that "*coercive interrogation techniques are alien to both*

⁷ Report of the Independent Panel To Review DoD Detention Operations, 2004

⁸ Memorandum to the Intelligence and Security Committee from the Cabinet Office, 7 September 2004

the then Home Secretary, who was the Minister accountable for the Security Service, was informed about this deployment. The Security Service had specifically informed the then Home Secretary and Home Office officials on 28 January 2002 about the deployments to Afghanistan, although it had been mentioned informally in bilateral meetings prior to that date.

45. As it was exceptional for the Agencies to interview individuals detained by other countries as a result of armed conflict, we believe that the Secretaries of State accountable for the Agencies ought to have been consulted prior to the interviewing of detainees in Afghanistan. We recommend that, in any future cases in which the UK is involved in armed conflict with another state or terrorist organisations, Ministers are consulted before staff are deployed to interview detainees held by another country.

46. On 10 January 2002, the first day that the SIS had access to US-held detainees, an SIS officer conducted an interview of a detainee. Whilst he was satisfied that there was nothing during the interview which could have been a breach of the Geneva Conventions, he reported back to London his:

*"... observations on the circumstances of the handling of [the] detainee by the US military before the beginning of the interview. ****

****: "11*

47. These comments raised concerns about the US treatment of detainees and the following day – 11 January 2002 – instructions were sent to the SIS officer and copied to all SIS and Security Service officers in Afghanistan, as follows:

"With regard to the status of the prisoners, under the various Geneva Conventions and protocols, all prisoners, however they are described, are entitled to the same levels of protection. You have commented on their treatment. It appears from your description that they may not be being treated in accordance with the appropriate standards. Given that they are not within our custody or control, the law does not require you to intervene to prevent this. That said, HMG's stated commitment to human rights makes it important that the Americans understand that we cannot be party to such ill treatment nor can we be seen to condone it. In no case should they be coerced during or in conjunction with an SIS interview of them. If circumstances allow, you should consider drawing this to the attention of a suitably senior US official locally.

¹¹ Letter from the SIS to the Intelligence and Security Committee, 24 September 2004

It is important that you do not engage in any activity yourself that involves inhumane or degrading treatment of prisoners. As a representative of a UK public authority, you are obliged to act in accordance with the Human Rights Act 2000 which prohibits torture, or inhumane or degrading treatment. Also as a Crown Servant, you are bound by Section 31 of the Criminal Justice Act 1948, which makes acts carried out overseas in the course of your official duties subject to UK criminal law. In other words, your actions incur criminal liability in the same way as if you were carrying out those acts in the UK."

48. Following receipt of these instructions, the SIS officer in Afghanistan took no further action and the SIS informed us that while he remained in Afghanistan for a further three weeks, he did not witness any further instances of this kind. The SIS told us that they regarded this as an isolated incident. Ministers were not informed about this incident until July 2004.

49. However, from January 2002 the Security Service ensured that all officers involved in interviews of detainees were briefed individually by a senior manager prior to their deployments.

50. There are many lessons to be learnt from this episode. The SIS officer correctly reported his observations and SIS headquarters responded promptly with instructions. But these instructions did not go far enough: they should have required the SIS officer to report his concerns to the senior US official. They should also have required all officers to report any similar matters in the future to both the US authorities and to their respective headquarters in the UK. Furthermore, the Foreign Secretary should have been informed immediately that an officer had reported that a serious potential abuse by the US military had occurred and that instructions had, as a consequence, been issued to all deployed staff from the SIS and Security Service.

51. As we have previously noted, the UK regarded all the detainees as subject to the provisions of the Geneva Conventions. However, on 7 February 2002 the US President stated as US policy that the Geneva Conventions did not apply to the conflict with Al Qaeda. He continued that, although the Conventions did apply to the conflict with Afghanistan, the Taliban were unlawful combatants and therefore did not qualify for prisoner of war status. The President, however, ordered that detainees were to be treated "*humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva*".

52. We have been told that in March 2002 an SIS officer in Afghanistan was told ***

The SIS officer returned the matter back to London but no action was taken either locally or by the SIS in London. Again we were told that this was because it was regarded as an isolated incident. Ministers were not informed of this matter until August 2004.

Afghanistan and Guantanamo Bay

114. The UK was not the detaining authority in Guantanamo Bay and, with the few exceptions mentioned in paragraph 8, the same is true for Afghanistan. Access to detainees was controlled and administered by the US authorities.

115. The deployment of UK intelligence personnel to Afghanistan and Guantanamo Bay was solely to gain intelligence that might prove valuable in the protection of the UK and its citizens from terrorism. We were told that detainees were only asked questions of direct concern to the UK's national security.

116. We have been told by the Prime Minister and by the Agencies that the information gained from interviews in Afghanistan and Guantanamo Bay made an important contribution to identifying and countering threats from Islamic extremist terrorist activity in the UK and elsewhere. The Agencies have also received intelligence from detainees, to whom they had not had access and whose locations and terms of detention are unknown, which has been of the "*highest value*".

117. As it was exceptional for the Agencies to interview individuals detained by other countries as a result of armed conflict, we believe that the Secretaries of State accountable for the Agencies ought to have been consulted prior to the interviewing of detainees in Afghanistan. **We recommend that, in all future operations in which the UK is involved in armed conflict with another state or with terrorist organisations, Ministers are consulted before staff are deployed to interview detainees held by another country.**

118. The SIS and Security Service personnel deployed to Afghanistan and Guantanamo Bay were not sufficiently trained in the Geneva Conventions, nor were they aware which interrogation techniques the UK had specifically banned in 1972.

119. Following an interview in January 2002, an SIS officer correctly reported his observations about the events surrounding the actual interview and SIS headquarters responded promptly with instructions, which were shared with the Security Service. But these instructions were not definitive enough: they should have required the SIS officer to report all concerns to the senior US official. They should also have required all officers to report any similar matters in the future to both the US authorities and their respective headquarters in the UK. Furthermore, as this was a contentious matter, the Foreign Secretary should have been informed both that an officer had reported a serious potential abuse by the US military and that instructions had, as a consequence, been issued to all deployed staff from the SIS and the Security Service.

Iraq

120. The SIS, Security Service and civilian DIS staff were not sufficiently trained in the Geneva Conventions prior to their deployment to Iraq, and they were not aware of the interrogation techniques that the UK had specifically banned. Nor were they or their military protection teams informed when the hooding of detainees during transit was prohibited in 2003. Additionally, the DIS civilian experts, who were assisting interviewers, were not briefed on the principles of interrogation.

121. There were two occasions when the SIS interviewed detainees who were hooded. The interviewers thought that this was to protect their identities and were unaware that it was prohibited to interview hooded detainees. These occasions were a breach of UK policy and should not have happened. Both instances occurred due to the lack of training prior to deployment. **We recommend that, prior to their deployment, UK intelligence personnel are clearly instructed as to their duties and responsibilities in respect of the treatment of detainees and of the reporting procedures in the event of concerns.**

General Points

122. Apart from the limited and specific breaches to which we have referred, we have found no evidence that UK intelligence personnel abused detainees.

123. In his letter of 24 May 2004 to the Intelligence and Security Committee, the Prime Minister said that *"UK intelligence personnel interviewing or witnessing the interviews of detainees are instructed to report if they believe detainees are being treated in an inhumane or degrading way"*. In fact the instructions issued by the SIS and the Security Service to their staff before June 2004 only required them to *"consider drawing this [the inappropriate treatment of detainees] to the attention of a suitable senior US official locally if circumstances allow"*.

124. The Prime Minister's letter also stated that *"The concerns of these staff were passed on to the US authorities, either locally or via intelligence or diplomatic channels"*. Our investigations have shown that most, but not all, of the specific concerns were reported to the US authorities.

125. We have reported that on a number of occasions when UK officials informed the US authorities of their concerns, these were not fully followed up by the UK. All such reports should be followed up by the UK authorities and, so far as it is within their power, fully investigated.

126. Within the UK intelligence community there was a tendency to deal with each report of potential abuse as an isolated incident and therefore there was no comprehensive approach to the handling of these reports by the involved UK intelligence personnel. The fact that Ministers were not informed in a timely manner about the majority of the reports

or incidents further inhibited the development of a comprehensive policy. We recommend that Ministers are informed immediately when any UK official has concerns about the treatment of detainees.

Training

127. UK intelligence personnel were insufficiently trained prior to their deployments to Afghanistan, Guantanamo Bay and Iraq.

128. By September 2004, the SIS, Security Service and DIS had each issued guidance to staff involved in the interviewing of detainees, which included the Geneva Conventions and UK policy and therefore addressed this training deficiency.

129. We are concerned at how long it took to issue this formal guidance. The need for this should have been recognised much earlier. The guidance, linked to training, should certainly have been issued prior to the invasion of Iraq and updated as necessary.

Procedures

130. The US authorities did not share with the UK intelligence personnel in Afghanistan, Guantanamo Bay or Iraq (except during the period January to March 2004 in Abu Ghraib prison) the techniques that they regarded as acceptable aids to interrogation.

131. We recommend that the UK authorities should seek agreement with allies on the methods and standards for the detention, interviewing or interrogation of people detained in future operations.