

13 December 2023

All Staff

Sent electronically.

Independent Inquiry relating to Afghanistan

This letter confirms the agreed position of the UK Defence leadership in respect of security vetting, administrative, disciplinary, and criminal proceedings in the context of the Independent Inquiry relating to Afghanistan (IIA).

Context

The IIA was launched in December 2022, in agreement with the Ministry of Defence, and retains the full support of the Defence Secretary the Rt Hon Grant Shapps MP. The Inquiry is chaired by the Lord Justice Haddon-Cave and holds the status of a statutory inquiry. It is therefore fully independent of Government and the MOD.

The aims of the IIA are four-fold:

1. To investigate into and report on alleged unlawful activity by United Kingdom Special Forces (UKSF) in their conduct of deliberate detention operations (DDOs) in Afghanistan during the period mid-2010 to mid-2013;
2. To identify and review concerns expressed within and to the UK Special Forces and Ministry of Defence (MOD) during the period mid-2010 to mid-2013 regarding the conduct of DDOs in Afghanistan and the fatalities reported during such operations;
3. To consider and determine the adequacy and appropriateness of the MOD's response to those concerns, both at the time that they were expressed or recorded and subsequently, including making any findings of fact as may be necessary for that purpose; and
4. To determine whether the investigations carried out by the Royal Military Police (RMP) into alleged unlawful conduct by the UKSF in Afghanistan in the course of DDOs during the period mid-2010 to mid-2013 were timely, rigorous, comprehensive, properly conducted and effective (in particular, Operation Northmoor and Operation Cestro).

The Core Participants of the Inquiry are: a) the Ministry of Defence; b) the Royal Military Police; and c) the 'Bereaved Families' (represented by Leigh Day).

Hearings from witnesses have been held in OPEN and CLOSED formats and will continue throughout 2024.

Further detail, including [transcripts](#) and [recordings](#) of the Open Hearings, and the Inquiry's [Terms of Reference](#) (TORs), can be found via <https://www.iiia.independent-inquiry.uk>.

Undertakings

In order to achieve the Inquiry's aims, while guaranteeing maximum protection for those who may have retained or provide evidence, the Inquiry Chair Lord Justice Haddon-Cave has sought a number of specific undertakings. These are set out in his [Final Ruling](#) of 26 October 2023, in response to submissions from the UK MOD and the other Core Participants. The UK Defence leadership, Attorney General, and United Kingdom Security Vetting (UKSV) have considered these undertakings and can now confirm the following:

Security Vetting

United Kingdom Security Vetting confirm:

“Where a current civil servant of the Ministry of Defence or a member of the Armed Forces has retained, in breach of Ministry of Defence Security Operating Procedures, documents relevant to the Inquiry's Terms of Reference classified below SECRET, which they have supplied to the Inquiry in good faith, and there is no information to suggest any unauthorised disclosure or that the individual now retains any classified documents, this shall not be taken into account when considering whether to refuse, decline to renew, or downgrade a security clearance.

Where a current civil servant of the Ministry of Defence or a member of the Armed Forces has retained, in breach of Ministry of Defence Security Operating Procedures, documents relevant to the Inquiry's Terms of Reference classified at SECRET or above and is referred to United Kingdom Security Vetting [UKSV] by MOD, UKSV will consider on a case-by-case basis whether any such retention of any document(s) at SECRET or above is a basis on which to recommend refusal, withdrawal, or to downgrade a security clearance.”

The Secretary of State for Defence confirms:

“Where an individual has retained, in breach of Security Operating Procedures, documents relevant to the Inquiry's Terms of Reference classified below SECRET, which they have supplied to the Inquiry in good faith, and there is no information to suggest any unauthorised disclosure or that the individual now retains any classified documents, this shall not constitute a reason for MOD to refer an individual for a review of security clearance.

Where an individual has retained, in breach of Security Operating Procedures, documents relevant to the Inquiry's Terms of Reference classified at SECRET or above, and UKSV considers that any such retention of any document(s) classified at SECRET or above is a basis upon which to refuse, decline to renew, or downgrade a security clearance, the MOD shall consider how to proceed on a case-by-case basis”.

Administrative and Disciplinary Action

The Secretary of State for Defence confirms:

“If a witness who is a former or current civil servant or member of the Armed Forces has retained, in breach of Security Operating Procedures, documentation relevant to the Inquiry’s Terms of Reference classified below SECRET, and supplied that documentation to the Inquiry, no investigation will be undertaken and there will be no disciplinary action (in relation to civil servants) or administrative action (in relation to service persons or former service persons) in respect of that breach.

“If a witness who is a former or current civil servant or member of the Armed Forces has retained, in breach of Security Operating Procedures, documentation relevant to the Inquiry’s Terms of Reference classified at SECRET or above, and supplied that documentation to the Inquiry, an internal MOD investigation will be undertaken only if proportionate and reasonably necessary, having regard to all the circumstances and in particular whether the information has been shared by any unauthorised person.

A decision whether to take disciplinary action (in relation to civil servants) or administrative action (in relation to service persons or former service persons) in respect of that breach will be taken on a case-by-case basis”.

The Permanent Secretary, Chief of Defence Staff, single Service Chiefs and Commander Strategic Command confirm:

“If written or oral evidence given to the Inquiry by a witness who is a former or current civil servant [of the Ministry of Defence] or a member of the Armed Forces may tend to indicate that: (1) the same witness previously failed to disclose misconduct by him or some other person, or (2) the same witness gave false information on a previous occasion in relation to such misconduct, then we undertake that the Ministry of Defence and Armed Forces will not use the evidence of that witness to the Inquiry in any disciplinary or administrative action against that witness where the nature of the misconduct alleged is the failure to give a full, proper or truthful account on that occasion.”

Criminal Proceedings

Additionally, the Attorney General has confirmed the following undertakings (reflecting the position adopted in the Baha Mousa Inquiry and the Al-Sweady Inquiry):

Firstly:

“No evidence that a person may give to the Inquiry will be used in evidence against that person in any criminal proceedings under the Official Secrets Acts or relied upon for the purpose of deciding whether to bring such proceedings against that person.

Where the evidence a person gives includes the production to the Inquiry of any document, film, image or any other physical item which does not lawfully belong to him, then his production of that item shall not be used as evidence against him in any criminal proceedings (including any proceedings for an

offence against military law, whether by court martial or summary hearing before a commanding officer or appropriate superior authority) in respect of his unlawful possession of it or relied upon for the purpose of deciding whether to bring such proceedings against that person.”

Secondly:

“If written or oral evidence given to the Inquiry by a witness who is a former or current civil servant or member of that Armed Force may tend to indicate that: (1) the same witness previously failed to disclose misconduct by him or some other person, or (2) the same witness gave false information on a previous occasion in relation to such misconduct, then I undertake that no evidence given to the Inquiry will be used in evidence against that person in any criminal proceedings (including any proceedings for an offence against military law, whether by court martial or summary hearing before a commanding officer or appropriate superior authority), where the conduct alleged is the failure to give a full, proper or truthful account on that previous occasion.”

Expectations and Official Authorisation

The Secretary of State for Defence, Chief of Defence Staff, Permanent Secretary, Heads of Service, and Commander Strategic Command urge all current and former civilian and military personnel to cooperate fully and proactively with the Inquiry, in circumstances where they judge they have material to provide that is relevant to the Inquiry’s TORs.

Individuals in possession of information, documents or other articles that are relevant to the TORs of the Inquiry are authorised to disclose such information, documents or articles to the Inquiry. Disclosures made, which would ordinarily constitute an offence under section 1 of the Official Secrets Act 1989, are, by virtue of this authorisation, lawful as per section 7 of that Act.

Rule 9 Requests

Subject to the Inquiry’s investigations, current and former civil servants of the Ministry of Defence and members of the Armed Forces may be called on to provide evidence in the form of a [Rule 9 Request](#). The Rule 9 Request will set a deadline for responding. The length of time allowed usually depends on the complexity of the request. Additionally, [Section 21](#) of the Inquiries Act 2005 allows for the Inquiry to compel an individual to provide a witness statement or documents. If a witness fails without reasonable excuse to comply with such a requirement, it may result in criminal prosecution.

Classification

The Inquiry is entitled to see all evidence, including content that is at the highest security classification.

Legal Support

The MOD's position is that the MOD did not, and does not, condone the behaviour of anyone acting unlawfully nor covering up the actions of those acting unlawfully, and this includes allegations of unlawful killings and cover-up. The MOD has committed to helping the Inquiry to achieve its aims in getting to the truth and so will provide to the Inquiry all the evidence it obtains that will assist in that aim. Notwithstanding, all members of the UK Armed Forces, including the Reserve Forces and MOD civilians, plus veterans, should expect to be provided with legal support at public expense where they face criminal or civil allegations that relate to actions taken during their employment or service, and where they were performing their duties.

Welfare Support

There are a number of organisations available for military and civilian staff, some of which are detailed below. We strongly advise that you contact them directly if you would like their support.

- Army Operational Legacy Branch (Major Tracey Brooks): tracey.brooks102@mod.gov.uk; Tel: 0300 1534300 or 07813007392.
- Veterans UK helpline: 0808 802 1212, which can link callers to the Samaritans Veterans programme.
- The Veterans' Gateway: <https://www.veteransgateway.org.uk>
- NHS: <https://www.nhs.uk/nhs-services/armed-forces-and-veterans-healthcare/veterans-nhs-mental-health-services>
- NHS Wales: <https://www.veteranswales.co.uk>
- NHS Scotland: <https://www.nhsinform.scot/care-support-and-rights/health-rights/access/health-rights-for-veterans#health-resources-for-veterans>
- The Northern Ireland Veterans' Support Office (NIVSO): <https://nivso.org.uk>
- [The Employee Assistance Programme \(EAP\)](#). This is a confidential helpline designed to assist civilian personnel, or military line managers of civilians with personal or professional problems that could be affecting their home or work life, health and general wellbeing. Tel: 0800 345 7047.

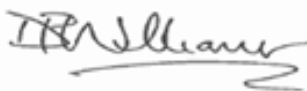
Further Considerations

Please consult Defence Instruction Notice [2022DIN01-137](#) if you have any further queries. This outlines the support that is available for current and former staff who become involved in legal proceedings, and other formal proceedings with which they are obliged to co-operate.

A new Defence Instructions and Notices (DIN) document and a Guide for Witnesses, both specific to the IIA, are being developed by SPO AIRU and will be made available in due course.

If you or members of your staff require further policy advice, please consult the Defence Policy team (SPO-AIRU) at: SPO-AIRU-Queries@mod.gov.uk.


Signed jointly by:



David Williams CB
Permanent Secretary



Admiral Sir Tony Radakin KCB ADC
Chief of Defence Staff



Admiral Sir Ben Key KCB CBE ADC
First Sea Lord
Royal Navy



Air Marshal Sir Richard Knighton KCB FREng
Chief of the Air Staff
Royal Air Force



General Sir Patrick Sanders KCB CBE DSO ADC Gen
Chief of the General Staff
British Army



General Sir Jim Hockenhull KBE ADC Gen
Commander Strategic Command