

1 Wednesday, 12 January 2011

2 (10.30 am)

3 Submissions re undertaking from the Attorney-General

4 THE CHAIRMAN: Mr Acton Davis.

5 MR ACTON DAVIS: Sir, in terms of representation I appear

6 this morning with my learned friends Mr Beer and

7 Ms Gargitter as counsel for the Inquiry. The MOD is

8 represented by Jeremy Johnson and Ms Cumberland,

9 although I understand that they are here in a strictly

10 non-speaking -- and are entirely decorative. The

11 Treasury Solicitor clients are represented by my learned

12 friends Mr Matthew Hill and Mr Neil Sheldon, and the PIL

13 clients are represented by my learned friend Mr Steven

14 Powles.

15 THE CHAIRMAN: Yes.

16 MR ACTON DAVIS: Sir, what is on the agenda today is a need

17 to consider further the formulation of the undertaking

18 to be sought from the Attorney General. There has been

19 an exchange of skeleton arguments which I anticipate you

20 have had an opportunity to read.

21 THE CHAIRMAN: Yes, and I have read them, thank you.

22 MR ACTON DAVIS: The position moved on somewhat yesterday

23 morning when we received from the Attorney General's

24 office a letter dated 10 January 2011. Have you had an

25 opportunity to see that?

1 THE CHAIRMAN: I have, yes.

2 MR ACTON DAVIS: Sir, having had a brief discussion with
3 Mr Sheldon before you came in, I understand that he is
4 content with what is proposed in that letter, but it may
5 be best if you first hear from him and then we can
6 consider whether we need to take this matter any
7 further.

8 THE CHAIRMAN: Very well, thank you very much.

9 Mr Sheldon?

10 MR SHELDON: Sir, thank you.

11 Mr Acton Davis is correct to say that we are content
12 with the substance of what is contained in the Attorney
13 General's letter of 10 January. You will have seen that
14 the terms of the final paragraph of that letter, at
15 least the first part of it, are to all intents and
16 purposes identical to the terms of the undertaking given
17 to the witnesses in the Baha Mousa Inquiry. That, as
18 I hope we made clear in our submissions, is all we
19 consider that our witnesses are entitled to and have
20 been entitled to from the outset, and of course matches
21 the request that you, sir, initially made following the
22 directions hearing that we had in the summer when this
23 issue was discussed.

24 In those circumstances, the question of what the
25 Attorney General might be asked or required to provide

1 by the Inquiry, which was the issue to which my skeleton
2 argument and my learned friend's was addressed, no
3 longer arises on our analysis because the Attorney
4 General has provided, in our submission, all that we are
5 entitled to.

6 THE CHAIRMAN: Right, so I gather from what you're saying
7 that you would want to have that letter published as
8 well as part of the overall undertaking provided by the
9 Attorney General and as published on the website.

10 MR SHELDON: We would, sir.

11 We note that the Attorney General describes the
12 final paragraph of that letter as an explanatory
13 addendum. We further note that the language of that
14 explanatory addendum is in the terms of undertakings.
15 In other words, he says expressly "it is undertaken that
16 ..." shall not be used.

17 So in our submission the two plainly need to be read
18 together, and it is our intention in accordance with
19 that understanding to advise our clients on that basis.

20 THE CHAIRMAN: Very well.

21 One other matter was raised in your skeleton, which
22 was addressed in the skeleton prepared by counsel to the
23 Inquiry, and that relates to the absence in paragraph 3
24 of the undertaking of words to the effect that make
25 provision for any decision as to whether to bring

1 proceedings are caught by that part of the undertaking.

2 Paragraph 37 of the counsel to the Inquiry's
3 skeleton indicates that that paragraph should and could
4 be amended to incorporate suitable words to deal with
5 the point raised in your skeleton which, it was
6 conceded, was a good point. Contact has been made with
7 the Attorney General's office and I'm in a position to
8 tell you that the Attorney General's office has
9 indicated that the Attorney General will be content to
10 make an amendment of the nature indicated in
11 paragraph 37 of the counsel to the Inquiry's skeleton
12 argument.

13 Would you wish that to be progressed as well?

14 MR SHELDON: I would, sir, yes, thank you.

15 THE CHAIRMAN: In that case it will be, because it does
16 require a formal application to be made by the Inquiry
17 to the Attorney to effect that amendment which will be
18 made to the original form of the undertaking, if I can
19 use that expression.

20 MR SHELDON: Sir, would you forgive me for just one moment?

21 THE CHAIRMAN: Yes, of course.

22 MR SHELDON: Sir, just for the purposes of clarification,
23 the proposal, as I understand it, made by counsel to the
24 Inquiry in paragraph 37 is that the existing final
25 paragraph of the undertaking set out in the letter of

1 2 December be amended to insert the words "or in any
2 decision as to whether to bring such proceedings ..."
3 THE CHAIRMAN: That is correct.
4 MR SHELDON: And in addition to that the explanatory
5 addendum will be published.
6 THE CHAIRMAN: That is right, yes.
7 MR SHELDON: As further explanation or further undertaking.
8 THE CHAIRMAN: Exactly so. I just wanted to be sure that
9 you would wish us to progress the suggested amendment in
10 paragraph 37 as well as publishing what I can describe
11 as the addendum letter.
12 MR SHELDON: Yes. We would.
13 THE CHAIRMAN: Very well, that will be done.
14 Is there anything further?
15 Mr Powles, was there anything you wished to add?
16 Thank you very much for your skeleton argument of course
17 which I have read.
18 MR POWLES: No, thank you, sir.
19 THE CHAIRMAN: Mr Acton Davis?
20 MR ACTON DAVIS: No, sir, there is nothing to add.
21 My understanding is, I should make plain, that my
22 learned friends are relying upon what is said by the
23 Attorney General's office in that letter.
24 THE CHAIRMAN: Yes. Yes.
25 Very well. In all those circumstances, as it seems

1 to me, unless anybody wishes me to do so, it wouldn't
2 appear that any form of written ruling or any other form
3 of ruling is required from me on this letter.

4 MR SHELDON: Sir, we certainly don't invite you to make one.

5 THE CHAIRMAN: Are you content with that, Mr Acton Davis?

6 MR ACTON DAVIS: Indeed, sir.

7 THE CHAIRMAN: Very well, thank up very much for your
8 assistance.

9 (10.39 am)

10 (The Inquiry adjourned until a date to be fixed)

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14 Attorney-General

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