

1 Friday, 12 November 2010

2 (10.30 am)

3 Second preliminary hearing

4 THE CHAIRMAN: Good morning everybody to this second
5 preliminary hearing. The main purpose of this hearing
6 is to bring everybody up to date and place on the public
7 record the progress made so far in this Al Sweady
8 Inquiry. So I'll call upon Mr Acton Davis, Lead Counsel
9 to the Inquiry, to bring you right up to date.

10 Summary of progress

11 MR ACTON DAVIS: Sir, may I first deal with the question of
12 representation?

13 I appear on behalf of the Inquiry, together with my
14 learned friends, Mr Jason Beer and Ms Emma Gargitter.
15 To my left is Mr Patrick O'Connor QC and
16 Mr Steven Powles, who are here on behalf of the Iraqi
17 core participants. To my right are Mr Jeremy Johnson
18 and Ms Melanie Cumberland, who are here on behalf of the
19 MoD, and over my right-hand shoulder is Mr Neil Garnham
20 and Miss Isabel McArdle, who are here on behalf of the
21 Treasury Solicitor.

22 Sir, on Tuesday 10 March of this year a preliminary
23 Inquiry hearing was held at which you and I identified
24 some of the categories of work that the Inquiry
25 anticipated would be required before any oral hearings

1 could be contemplated. The first and most important of
2 those was to identify and gather all the available
3 evidence that will enable an effective factual
4 investigation to be made into these allegations and
5 denials.

6 You, Sir, noted that "... of necessity, that task
7 will require considerable preparation and research", and
8 so it has proved. The following update is intended to
9 provide the core participants and all those with an
10 interest in the progress of this Inquiry with a summary
11 of the considerable preparation work that has been
12 taking place over the last eight months and an
13 appreciation of the expected timetable henceforth.

14 The first item is the list of issues. One of the
15 first tasks was to draft a list of issues for
16 consideration by the Inquiry. The list was compiled in
17 order to explain more fully those matters which the
18 Inquiry considers relevant to its terms of reference.
19 It is designed to assist in providing structure for the
20 Inquiry itself and the core participants when
21 considering the evidence.

22 The list was first published on 30 March of this
23 year. It will remain under active consideration by you
24 and the Inquiry team. Thus far, the Inquiry has
25 considered submissions from PIL on behalf of the Iraqi

1 core participants and updated the list following careful
2 consideration of those submissions. This occurred on
3 26 May 2010. There has been a further update on
4 17 September to clarify the scope of issue IV. Each of
5 those versions can be found on the Inquiry's website and
6 any future amendments will be similarly published.

7 The second item is the designation of core
8 participants. In accordance with Rule 5 of the
9 Inquiry Rules 2006, the Inquiry has designated the
10 following as core participants, all of whom have
11 consented to being so designated: the Ministry of
12 Defence; eight of the nine Iraqi detainees -- that is
13 all of the detainees currently represented by PIL; and
14 the uncle of Hamid Al-Sweady, one of those who died on
15 14 to 15 May 2004, and after whom, of course, this
16 Inquiry is named.

17 Additionally, the Treasury Solicitor, who is
18 expected to represent the majority of those witnesses
19 who are or who were formerly military or civilian
20 employees of the MoD, has been and will continue to be
21 afforded the opportunity of participating in issues
22 relating to the Inquiry's process.

23 Judicial review material received from the MoD.

24 At the outset of this Inquiry, the MoD agreed to
25 provide in electronic form all material that it had

1 served or disclosed during the judicial review
2 proceedings that preceded the setting up of this
3 Inquiry. The provision of this material was intended to
4 allow the Inquiry immediately to gain an understanding
5 of the evidence that had been gathered up to that point.
6 A similar request was made of PIL.

7 The volume of material provided by the MoD amounted
8 to some 32,000 pages. Amongst those documents were
9 witness statements and exhibits, copies of
10 contemporaneous records and correspondence, and
11 investigative material generated by the RMP. Whilst the
12 majority of the material was clearly relevant to the
13 Inquiry's terms of reference, alas not all of it was.

14 Furthermore and regrettably, when provided, the
15 material was not organised in such a way as to enable
16 any meaningful analysis of the state of the evidence.
17 For example, it became clear very quickly that there
18 were, in many cases, several copies of the same witness
19 statement or exhibit, whilst in other areas there were
20 apparently missing documents or pages. A large part of
21 the Inquiry's resources was therefore initially
22 dedicated to de-duplicating and re-organising the
23 judicial review material in order to facilitate its use
24 by the Inquiry.

25 The state of the material was such that it took

1 a team of four paralegals almost three months of work to
2 complete the task. The deployment of such intensive
3 resources has, however, paid off. The level of
4 duplication was in the region of 57 per cent. This
5 means that the quantity of material to be considered for
6 disclosure has been significantly reduced. The Inquiry
7 is also better placed to identify apparent gaps in the
8 material and has made requests to the MoD for disclosure
9 of further information as a result, as I will explain
10 later.

11 Following the de-duplication exercise, the material
12 has been considered and organised by its relevance to
13 particular witnesses. The Inquiry has commenced
14 disclosing this material to core participants in an
15 organised fashion so that its relevance and the
16 relevance of particular witnesses can be more easily
17 understood, even by those who are new to its subject
18 matter.

19 The material has also been organised to enable
20 official disclosure of material relevant to witnesses
21 who are to be asked to provide evidence to the Inquiry
22 by means of a written Rule 9 request. Statements and
23 other evidence obtained by the Inquiry will supersede
24 initial Inquiry disclosure in due course.

25 Issuing of protocols.

1 The issuing of protocols to regulate the procedure
2 of the Inquiry was an important early step in ensuring
3 the transparency and efficiency of the Inquiry.
4 Protocols have been issued setting out the procedure to
5 be followed in relation to the following matters.

6 First, the presentation of witness evidence to the
7 Inquiry. This protocol was issued on 27 May 2010. It
8 sets out the procedure to be followed by the Inquiry in
9 requesting those who are believed to have relevant
10 evidence to provide a statement and, where appropriate,
11 to attend to give oral evidence, as well as the
12 procedure witnesses should follow in responding to
13 requests for evidence. It is published on the website
14 now in an amended form.

15 Due to the nature of the events the Inquiry is
16 considering, in particular in relation to the battle of
17 Danny Boy itself, the protocol provides for witnesses to
18 be interviewed by the Inquiry team in order to assist
19 them in drawing up their draft statements. Unlike many
20 public inquiries, this one is likely to be highly
21 reliant on the evidence of eye witnesses to the relevant
22 events.

23 Whilst the Inquiry is making every effort to ensure
24 that its written requests for evidence are as
25 comprehensive as possible, about which I'll say more

1 later, it also recognises that the witnesses are to be
2 asked to provide detail about events which occurred six
3 years ago. The Inquiry considers that witnesses may
4 benefit from being interviewed by the Inquiry team in
5 order to ensure that all relevant information within
6 their knowledge is obtained and of course properly
7 understood by the Inquiry.

8 Second, protective measures and anonymity.
9 Recognising that some witnesses to the Inquiry may have
10 good reason to seek protective measures, for example the
11 withholding of their name or screening from the public
12 whilst giving evidence, the Inquiry has published
13 a protocol for those wishing to apply for any protective
14 measures, including anonymity.

15 On 21 June of this year a hearing was held at which
16 core participants and the Treasury Solicitor made
17 submissions about the way in which you should decide
18 upon any such applications. Your ruling, having heard
19 those submissions, is published on the website.
20 Following further representations from the MoD, the
21 protocol was amended on 6 September 2010.

22 Third, disclosure and redaction. The Inquiry is
23 concerned to ensure that all material relevant to its
24 task is disclosed promptly. Late disclosure not only
25 has the ability to slow the progress of the Inquiry, but

1 also to make the presentation and evaluation of the
2 evidence more burdensome.

3 It is expected that the MoD will provide the bulk of
4 the material relevant to the Inquiry's terms of
5 reference and has done so far. The disclosure protocol
6 published on 28 July 2010 is designed to regulate the
7 process by which the Inquiry requests information and
8 the MoD or other Government department where relevant
9 provides material to the Inquiry.

10 The Inquiry is grateful to have received assistance
11 from the MoD in understanding the nature of the material
12 it holds and the manner in which searches of that
13 material might best be carried out in order to find
14 information of relevance to the Inquiry. The Inquiry
15 envisages making a significant number of requests for
16 disclosure of further material, but is intending to keep
17 those requests as focused as is possible. The spirit of
18 cooperation has been welcome and has assisted the
19 progress of the Inquiry thus far. It is hoped that
20 requests for disclosure of material will be dealt with
21 expeditiously so as to ensure the efficient progress of
22 the Inquiry.

23 You, Sir, have made plain that you are committed to
24 ensuring that the Inquiry is conducted transparently
25 and, so far as possible, publicly. However, the Inquiry

1 recognises that in respect of certain categories of
2 information or material there may be good reason why it
3 should not be made publicly available and/or should not
4 be disclosed at all, even to core participants.

5 The redaction protocol, also published on 28 July
6 2010, sets out the procedure by which the MoD or any
7 other party can apply to you for a restriction order,
8 restricting the disclosure or publication of certain
9 information or categories of information. The Inquiry
10 is glad to have received from the MoD a schedule of the
11 categories of information in respect of which it
12 envisages making applications for restriction orders in
13 accordance with paragraph 6 to 8 of that protocol. It
14 is the intention of the Inquiry to consider and decide
15 upon applications for restriction orders on a continuing
16 basis and, insofar as is possible, before any oral
17 hearings get underway.

18 Pursuant to paragraph 30 of the protocol, on
19 3 August this year you issued a general restriction
20 order providing for the redaction of personal data,
21 other than the name and/or designation of a witness, as
22 a matter of course from witness statements and other
23 documents, except where such information is deemed
24 relevant to the discharge by the Inquiry of its terms of
25 reference.

1 Undertakings from the Attorney General and others.

2 On 21 June 2010 an Inquiry hearing took place at
3 which the issue of immunities and related undertakings
4 was considered. Sir, you had, prior to the hearing,
5 communicated to core participants that you were
6 considering requesting appropriate undertakings to
7 protect witnesses from the risk of their evidence or
8 information being used against them in criminal
9 proceedings and possibly in administrative or
10 disciplinary procedures falling short, of course, of
11 criminal proceedings.

12 Having heard submissions from the core participants
13 and the Treasury Solicitor on this issue, you issued
14 a ruling which can be found on the Inquiry's website,
15 alongside the written submissions of the participants.
16 In summary, you decided that it would be appropriate to
17 seek from the Attorney General an undertaking
18 co-extensive with the privilege against
19 self-incrimination and therefore similar to that
20 provided to the Baha Mousa Inquiry. The rationale for
21 obtaining such an undertaking is to ensure that
22 witnesses feel able to provide full and frank accounts
23 to the Inquiry, free from any concerns that they might
24 otherwise have about the consequences for themselves of
25 doing so.

1 An undertaking has now been obtained from the
2 Attorney General. The Advocate General for Scotland and
3 the Attorney General for Northern Ireland are
4 considering similar requests. The Inquiry has also
5 obtained undertakings from the Permanent Under-Secretary
6 of State for the MoD and the various heads of the armed
7 services that the evidence of a relevant witness to the
8 Inquiry will not be used in any disciplinary proceedings
9 against that witness where the nature of the misconduct
10 alleged is the failure to give a full, proper or
11 truthful account on any previous occasion, and the
12 evidence may tend to indicate that the witness
13 previously failed to disclose misconduct by himself or
14 another person or the same witness gave false
15 information on a previous occasion in relation to such
16 misconduct. The undertakings so far obtained will be
17 published on the Inquiry's website shortly.

18 Iraqi witnesses.

19 At the time of the setting up of this Inquiry, there
20 was limited information relating to the allegations
21 being made against British soldiers. Unusually,
22 therefore, it became an important task of the Inquiry to
23 obtain clear statements from those witnesses making the
24 allegations that led to the setting up of the Inquiry
25 and to identify others who may have relevant and direct

1 evidence of the events the subject of the Inquiry's
2 terms of reference.

3 The task has proved far from straightforward.
4 Unfortunately the current situation in Iraq means that
5 it would be extremely difficult, if not impossible, for
6 any investigator from the Inquiry to travel to Iraq for
7 the purpose of locating and interviewing witnesses and
8 drafting their statements. Bringing a considerable
9 number of Iraqi witnesses to the United Kingdom would be
10 extremely expensive and would, in any event, depend upon
11 the obtaining of visas which might not be granted.

12 In summary, significant logistical problems were
13 considered and overcome by the Inquiry Secretariat and
14 investigators working together over several months, and
15 with the assistance of PIL, to deliver a process for
16 obtaining witness evidence in an efficient manner and
17 suitable environment in Beirut, Lebanon.

18 The Inquiry's team of investigators, expanded from
19 four to 11 since the hearing in March 2010 to meet the
20 task of gathering Iraqi and other witness evidence, has
21 been busy locating, contacting and interviewing Iraqi
22 witnesses. The process has been demanding and
23 time-consuming. One member of the team has visited
24 Basra, Iraq, on more than one occasion, but has
25 encountered difficulty in moving outside the secure

1 area.

2 A locally based Iraqi citizen has been engaged and
3 has provided significant assistance in tracking down
4 witnesses to the events of 14 and 15 May 2004, some of
5 whom have never provided evidence to any British
6 authority before now and were instinctively reluctant to
7 cooperate with the British authorities. Without this
8 assistance it is likely that the Inquiry would have been
9 unable to persuade such witnesses to come forward with
10 the relevant information that they hold.

11 As I said earlier, once identified and located,
12 Iraqi witnesses have travelled to Beirut where travel
13 formalities are more straightforward and the Inquiry has
14 made the necessary arrangements, again with the
15 assistance of PIL, to interview witnesses and draw up
16 statements using high-quality interpreters.

17 In many cases the witnesses had no passports and
18 some time was necessarily taken up waiting for the
19 relatively lengthy process of the witnesses applying for
20 and being granted a passport. The Inquiry would like to
21 acknowledge the assistance of PIL, as the legal
22 representatives of some of the witnesses, in assisting
23 with this issue.

24 The process in Beirut has so far worked extremely
25 well, with sufficient time provided to each witness to

1 provide a full account, which is then used to write up
2 a statement of their evidence to the Inquiry that is
3 considered, finalised and signed by the witness before
4 he leaves Beirut.

5 These efforts have resulted in the Inquiry locating
6 more Iraqi witnesses than at first was thought possible
7 or likely. One consequence, of course, is that it is
8 taking far longer to gather the Iraqi evidence than was
9 anticipated at the preliminary hearing in March 2010.
10 At present it is hoped that the majority of the Iraqi
11 evidence, if not all, will be obtained by the end of May
12 2011.

13 Notwithstanding the difficulty involved, the
14 Inquiry's investigation team has completed the
15 interviewing and statement-taking process for seven of
16 the nine detainees who have all been interviewed at
17 length on at least one occasion. The family members of
18 Hamid Al-Sweady, after whom this Inquiry is named, have
19 also provided statements to the Inquiry, as well as
20 a witness who was working at the local hospital on
21 14 May 2004 and travelled to Danny Boy in an ambulance
22 whilst the battle was taking place. All of those
23 individuals are important witnesses for the Inquiry,
24 hence the obtaining of their evidence has been
25 a priority.

1 Sir, it is hoped that before the end of this year
2 the Inquiry will have completed the interview and
3 statement-taking process for at least a dozen further
4 Iraqi witnesses who observed injuries on the dead after
5 their return to the Iraqi authorities. It is thought
6 that there are approximately 20 further witnesses who
7 have similar further evidence to give and who will be
8 seen early next year.

9 Thereafter the Inquiry's investigators will focus on
10 obtaining evidence from the medical teams who were
11 involved with the treatment of the injured and
12 collection of the dead on 14 and 15 May 2004, the local
13 judiciary, who were involved in the cases of the
14 detainees in 2004 to 2005, along with any other
15 individuals who come forward and appear to have evidence
16 relevant to the Inquiry's terms of reference.

17 Disclosure from the Ministry of Defence.

18 Members of the Inquiry's investigative and legal
19 teams attended the Royal Military Police offices at
20 Campion Lines, Bulford, on a number of occasions between
21 May and August of this year in order to inspect material
22 stored there for the purpose of ensuring that the
23 Inquiry obtained all relevant material gathered and
24 generated by the Royal Military Police in the course of
25 its investigations. The inspections involved the review

1 by the Inquiry teams of many thousands of pages of
2 evidential and investigative material.

3 The Inquiry's review of the judicial review material
4 and the Inquiry's ongoing investigations continue to
5 generate disclosure requests.

6 The Ministry of Defence has explained to the Inquiry
7 the record-keeping policies in place and identified MoD
8 storage repositories in which there may be material
9 relevant to the Inquiry's terms of reference. The
10 Inquiry is reviewing these repositories through
11 a combination of electronic and hard copy search
12 techniques and inspections.

13 On 15 June of this year, through the cooperation of
14 the army, you, Sir, together with the Inquiry's legal
15 and investigative teams, inspected a Snatch Land Rover
16 and Warrior Infantry Fighting Vehicle at the Land
17 Warfare Centre in Warminster. The purpose of this
18 inspection was to gain a better understanding of the
19 operation and capacity of the vehicles deployed in the
20 course of the fire fight and the means by which the
21 Iraqi deceased and detainees were transported to CAN
22 following the fire fight. The MoD are providing
23 photographs of the relevant vehicles that were taken
24 during the inspection and 3D imagery of the vehicles is
25 to be made available for the purpose of assisting

1 witnesses in the course of the Inquiry hearings.

2 Disclosure from others.

3 Although the Inquiry expects the majority of its
4 material to come from the MoD, there are others who have
5 information of relevance. Amongst those from whom
6 information has been received and from whom further
7 information is being sought are the Greater Manchester
8 Police, who obtained relevant material as part of their
9 review of the Royal Military Police investigation into
10 the Danny Boy incident and aftermath, the Metropolitan
11 Police Service, who were asked to conduct a scoping
12 exercise during the judicial review proceedings and
13 obtain material relevant to that task, and various
14 journalists and media organisations who hold or have
15 access to contemporaneously recorded accounts and other
16 relevant information relating to the events of 14 and
17 15 May 2004 and their aftermath.

18 In order to establish who else might have
19 information of relevance, the Inquiry has conducted an
20 initial analysis of available media reporting on the
21 incidents the subject of the terms of reference. It is
22 intended that a specialist media historian will be
23 instructed to undertake further reviews of a wider range
24 of media sources to ensure that all those with direct
25 evidence or other relevant information might be

1 identified to the Inquiry and all relevant information
2 taken into account. Thus far the assistance provided by
3 those with whom we have been able to make contact has
4 enhanced the Inquiry's understanding of the events of
5 14 and 15 May 2004 and in some cases led to the Inquiry
6 identifying sources of information or witnesses which
7 were previously unknown.

8 The Inquiry has been in correspondence with the
9 International Criminal Court, which has said that at
10 present it has no information relevant to the Inquiry's
11 terms of reference.

12 The Inquiry is anxious to hear from anyone who
13 thinks they might have relevant information and who has
14 not yet made contact with the Inquiry. In particular
15 the Inquiry is keen to trace all military personnel or
16 others who were at Camp Abu Naji on 14 to 15 May 2004
17 and, perhaps most importantly, anyone who saw or heard
18 anything relating to the battle of Danny Boy and/or the
19 arrival of detainees and/or Iraqi dead at the camp
20 during that time or who had sight or direct contact with
21 the detainees or Iraqi dead on those days.

22 The identification of military witnesses including
23 civilian employees of the Ministry of Defence.

24 As will be clear from the list of issues published
25 on the website, in order to fulfil its terms of

1 reference the Inquiry considers it necessary to gain an
2 understanding of the battle that took place on 14 May
3 2004, its aftermath and the return to CAN and the events
4 of 15 May insofar as they relate to the return of the
5 Iraqi dead and those detainees who were moved to the
6 facility at Al Shaibah.

7 A thorough review of the judicial review material
8 combined with specific requests for disclosure from the
9 MoD has revealed the existence of more than
10 400 potential military witnesses. It is possible that
11 more individuals who were present at the relevant
12 locations and who may therefore have relevant evidence
13 to give will be identified by the MoD in responding to
14 further requests for disclosure which have recently been
15 made. Whether or not each of those witnesses does have
16 relevant evidence to give to the Inquiry and whether or
17 not that evidence will be heard orally remains
18 necessarily uncertain at this stage.

19 Clearly, Sir, the process of locating these
20 witnesses, some of whom may still be serving in the
21 armed forces and some of whom may have left the military
22 some years ago, contacting them, obtaining draft witness
23 statements, making requests for further information or
24 further statements and finalising and signing off those
25 statements is going to take considerable time and

1 effort.

2 The effort is already underway with the assistance
3 of the MoD and the Treasury Solicitor, who have made
4 attempts, in some cases successfully, to alert many of
5 the witnesses to the fact that they will be required to
6 provide a statement to the Inquiry and to obtain current
7 contact details to facilitate that process.

8 Nevertheless, there remain many witnesses who are
9 yet to be located. Having provided the MoD with an
10 initial list of about 200 witnesses in August this year,
11 the Inquiry has recently provided a list including
12 approximately 150 further names. The list of military
13 witnesses remains under review.

14 The drafting of Rule 9 requests for evidence from
15 military witnesses, procedure envisaged for the future.

16 In relation to those military witnesses who have so
17 far been identified as having relevant evidence to give,
18 the Inquiry has begun to draft written requests for
19 evidence pursuant to Rule 9 of the Inquiry Rules 2006.
20 Notwithstanding that it is hoped that witnesses will
21 choose to be interviewed by the Inquiry team in order to
22 ensure that their evidence is understood better by the
23 Inquiry team at an early stage, the Rule 9 requests are
24 full and are designed to elicit from each witness all
25 information they have which is relevant to the events

1 the Inquiry is concerned with.

2 Because the Inquiry recognises that given the lapse
3 of time it may be difficult for witnesses to recall the
4 detail of their involvement or what they saw and heard,
5 in addition to the written request each witness will
6 receive or be provided with access to a pack containing
7 previous accounts they have given, including both draft
8 and final signed statements where applicable, and
9 contemporaneous documents which they produced or to
10 which they had access, for example sketch plans and
11 handwritten notes.

12 The Inquiry has identified a group of witnesses who,
13 whilst known by others as having been present either at
14 Camp Abu Naji or at the facility at Al Shaibah, have
15 never before given a statement in relation to those
16 events. As such, the Inquiry has very little
17 information on which to determine whether these
18 witnesses have any relevant evidence to give. It is
19 intended that these witnesses will be sent an initial
20 questionnaire rather than a full Rule 9 request in the
21 first instance in order to ascertain whether they in
22 fact have any relevant information.

23 The Inquiry has completed the process of drafting
24 Rule 9 requests or questionnaires and collating relevant
25 documents for approximately 180 witnesses. Subject to

1 tracing all those identified as potential witnesses, it
2 is expected that the majority of Rule 9 requests can be
3 sent out before the end of this year.

4 Disclosure to core participants and the Treasury
5 Solicitor.

6 Having de-duplicated the material initially received
7 from the Ministry of Defence, the Inquiry has organised
8 a significant part of it so that it is ready for
9 disclosure to core participants and the
10 Treasury Solicitor as "initial Inquiry material". It is
11 hoped that this material will provide the core
12 participants with a basic understanding of the evidence
13 likely to be received by the Inquiry in due course and
14 to enable them to assist you with any procedural issues
15 that may arise in advance of disclosure of the Inquiry
16 evidence, which is unlikely to begin before early next
17 year.

18 The material is now stored on an electronic database
19 called "Lextranet". Relevant members of the Ministry of
20 Defence and PIL have undergone the necessary training to
21 use the system and have been granted licences for
22 accessing it. They have also signed confidentiality
23 undertakings in respect of material disclosed to them by
24 the Inquiry.

25 So far the Ministry of Defence and PIL have received

1 initial disclosure of 118 witness folders and it is
2 expected that disclosure of a second and smaller tranche
3 will follow shortly. Broadly speaking, each witness
4 folder contains the available previous witness statement
5 or statements of the witness, along with material
6 exhibited by them.

7 Following discussions between the Inquiry and the
8 Treasury Solicitor in relation to the terms of their
9 confidentiality undertaking, an undertaking has been
10 agreed in principle and it is expected that the
11 Treasury Solicitor will very soon be in a position to
12 receive Lextranet training and receive disclosure of the
13 identical initial material.

14 Future Inquiry work.

15 Although at the time of the preliminary hearing in
16 March of this year it was hoped that Counsel to the
17 Inquiry might be in a position to make an oral opening
18 to you before the end of this year, it has become clear,
19 I regret to say, that it will not be possible to adhere
20 to that timetable.

21 Whilst it was intended that disclosure of Inquiry
22 evidence might begin as early as last September, for the
23 reasons already set out this has not been possible.
24 Although some Inquiry material consisting of relevant
25 material from the judicial review proceedings,

1 de-duplicated and organised for relevance to the
2 Inquiry, has already been made available to core
3 participants, the extent of that disclosure is
4 necessarily limited.

5 Insofar as Inquiry evidence is concerned, the
6 Inquiry, as I have explained, is still in the process of
7 obtaining statements from the relevant Iraqi witnesses,
8 a process which it is envisaged will take a further five
9 or six months to complete. The gathering of evidence
10 from military witnesses has yet to commence in earnest
11 and is expected to take at least four months to
12 complete.

13 In so far as is possible, the Inquiry hopes to
14 disclose the Inquiry evidence to core participants in
15 good time before oral hearings commence, with a view to
16 ensuring the smooth and uninterrupted running of the
17 Inquiry hearings once the oral evidence gets underway.

18 As it is now anticipated that the evidence-gathering
19 will not be completed before May of next year, the
20 earliest time at which this Inquiry could be opened is
21 in the summer of next year, with the hearing of oral
22 evidence from witnesses to commence as soon as
23 practicable thereafter. Alas, the time required to hear
24 all the evidence remains uncertain, but it is clear that
25 it will take an appreciable period and is likely to

1 continue into 2012.

2 Sir, it may be that one or more of my learned
3 friends who are here for the core participants or
4 instructed by the Treasury Solicitor would like to add
5 to or comment upon anything that I have just said.

6 THE CHAIRMAN: Thank you, Mr Acton Davis.

7 Well, Mr O'Connor, is there anything you want to
8 draw to my attention or any comments you wish to make at
9 this stage?

10 MR O'CONNOR: Sir, only to confirm from our personal
11 knowledge the amount of work that has been done by the
12 Inquiry team and your team of investigators. It has
13 been dedicated work and it has been very impressive.

14 THE CHAIRMAN: Thank you very much, Mr O'Connor.

15 Mr Johnson, is there anything you wish to add?

16 MR JOHNSON: My Lord, there is nothing we wish to add, thank
17 you.

18 THE CHAIRMAN: Mr Garnham?

19 MR GARNHAM: Sir, just two matters.

20 THE CHAIRMAN: Yes.

21 MR GARNHAM: First of all, we are very grateful to you and
22 to your team for the efforts that have been made to
23 obtain the undertaking from the Attorney General. We
24 first had sight of that late last night. I saw it early
25 this morning. We have to confess to some disappointment

1 that it is not precisely in the terms you invited the
2 Attorney General to make that undertaking.

3 There are two particular respects I draw to your
4 attention.

5 THE CHAIRMAN: Yes.

6 MR GARNHAM: The first may be a simple drafting error, but
7 as it is currently formulated --

8 THE CHAIRMAN: I don't think I have a copy of the
9 undertaking in front of me at the moment. Would you
10 just give me a moment, Mr Garnham? Whilst that is being
11 passed up to me, of course -- I'm sorry you had it so
12 late, but, of course, so did I. You got it pretty
13 quickly after I got it.

14 MR GARNHAM: Sir, we understood that to be the case.

15 THE CHAIRMAN: Yes, okay. Yes, the first matter?

16 MR GARNHAM: Sir, we note first of all that the Attorney
17 says on the third paragraph in the first page that this
18 is an undertaking he proposes to grant. We flag that up
19 simply because it may yet be possible for corrections,
20 certainly of the sort I'm going to cover in my first
21 point to be remedied.

22 THE CHAIRMAN: Yes.

23 MR GARNHAM: Sir, if I invite you then to turn over the page
24 to the text of the undertaking that the Attorney
25 proposes, you will see that the substantive three

1 paragraphs are prefaced with the words "... save that
2 this undertaking does not apply to ..."

3 THE CHAIRMAN: Yes.

4 MR GARNHAM: In (c) there is what we understood from the
5 hearing before you at an earlier occasion the second
6 substantive undertaking that you invited the Attorney to
7 give. We suspect that what should have happened is that
8 that should have been a fresh free-standing paragraph,
9 not one made subject to those introductory words. As
10 I say, we anticipate there is a drafting error that can
11 readily be rectified.

12 THE CHAIRMAN: You are saying that (c) seems to be an
13 inappropriate sub-paragraph given the introduction. It
14 is a separate paragraph.

15 MR GARNHAM: Yes, Sir. Rather more substantive is that the
16 wording of (c) itself is different from the way you
17 invited the Attorney to give his undertaking and it is
18 different in one material respect, namely the addition
19 of the word "solely" in the penultimate line.

20 It would appear to be a consequence that an
21 investigation commenced principally because of evidence
22 provided by a witness, but also in the light of some
23 other trivial piece of evidence which supports that
24 case, would now not be caught by the undertaking. That
25 plainly was not your intention when you formulated the

1 suggested undertaking to the Attorney, but the addition
2 of the word "solely", it appears to us on a first
3 reading, has had that effect.

4 Sir, it may well be that this should be the subject
5 of correspondence between those instructing me and the
6 Solicitor to this Inquiry, but I anticipate that we will
7 be inviting the Inquiry to write again to the Attorney
8 to make the two changes that I have referred to. I say
9 all that conscious of the fact that I know that
10 considerable efforts have been made already by the
11 Inquiry to obtain this undertaking, but nevertheless you
12 will understand, Sir, how important it is to those whom
13 I represent that the undertaking is right.

14 THE CHAIRMAN: Yes, Mr Garnham, thank you. The fact you
15 were going to raise these matters was drawn to my
16 attention shortly before I came in. I don't complain
17 about that but, as you have probably foreseen already
18 from what you said, it is not going to be possible for
19 me to deal with these points at this hearing today. But
20 I'm very grateful to you having drawn them to my
21 attention. I will go away and consider them and deal
22 with them as appropriate. I also think it is right that
23 there should be correspondence about the matter so that
24 it is on the record.

25 MR GARNHAM: Sir, we will see that that happens after today.

1 THE CHAIRMAN: Thank you very much indeed. Yes,
2 Mr Acton Davis?

3 MR ACTON DAVIS: May I just add that I'm grateful to my
4 friend for having raised it. We will certainly consider
5 the points he raised and see if we can meet them.

6 THE CHAIRMAN: Yes. Thank you. Is there anything else,
7 Mr Garnham?

8 MR GARNHAM: Sir, there was a second matter. Again it is
9 something I need to only flag up and it can be dealt
10 with in correspondence. We have raised with the Inquiry
11 team, Sir, on previous occasions, the inquiries that
12 I know the Inquiry has made of the MoD about threat
13 assessments.

14 My learned friend Mr Acton Davis' remarks this
15 morning haven't addressed that. We would simply flag up
16 that that may be something that will need to be done
17 before statements are provided. It is obviously of
18 particular relevance to anonymity applications.

19 THE CHAIRMAN: Very well. Yes, Mr Acton Davis.

20 MR ACTON DAVIS: I understand what my friend says.

21 THE CHAIRMAN: Very well. Is there anything else?

22 MR GARNHAM: No, thank you very much, Sir.

23 THE CHAIRMAN: Thank you all very much. Unless there is
24 anything else that anybody else wants to raise, that
25 concludes this morning's hearing.

1 (11.18 am)

2 (The Inquiry adjourned to a date to be fixed)

3 I N D E X

4 Second preliminary hearing1

5 Summary of progress1

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